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March 21, 2006

The Honorable Charles Terreni  
Chief Clerk of the Commission  
Public Service Commission of South Carolina  
Post Office Drawer 11649  
Columbia, South Carolina 29211

Re: Joint Petition for Arbitration of NewSouth Communications Corp., NuVox Communications, Inc., KMC Telecom V, Inc., KMC Telecom III LLC, and Xspedius [Affiliates] an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Communications Act of 1934, as Amended  
Docket No. 2005-57-C

Dear Mr. Terreni:

BellSouth Telecommunications, Inc. respectfully submits the following information in an attempt to facilitate an orderly approach to the March 23, 2006 hearing in this docket.

**A. A Final Proposed Solution**

BellSouth reiterates that it has suggested various solutions that would eliminate the need for any further arguments.<sup>1</sup> In a final effort to resolve this dispute, BellSouth is

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<sup>1</sup> For example, the companion proceedings in Mississippi went to hearing after BellSouth filed its Motion to Strike Mr. Russell's testimony, and the Joint Petitioners used a different witness in those proceedings. BellSouth has been willing, and remains willing, to resolve this matter by submitting the transcript of that witness' testimony in this docket, but the Joint Petitioners have declined. Alternatively, BellSouth has been willing, and remains willing, to resolve this matter by submitting Mr. Russell's testimony in the companion Kentucky proceeding (which was presented before Mr. Russell was employed by Nelson Mullins) in this docket, but the Joint Petitioners have declined. Additionally, it has been more than nine months since Mr. Russell stopped working for NuVox, and in those nine months the Joint Petitioners easily could have prepared and

willing to have the Joint Petitioners designate another witness (other than Mr. Russell) who would adopt the Rebuttal and hearing room testimony that has been stricken from the record. The parties would then submit that other witness' testimony into the record without objection. This solution eliminates the need for any hearing Thursday, it allows the Joint Petitioners to submit briefs and to argue from the exact substantive record that existed before Mr. Russell's testimony was stricken, and it does not prejudice any party's rights with regard to any conflict of interest issues. If the Joint Petitioners accept this proposed solution, the remainder of this letter is moot.

**B. BellSouth's Specific Objection to Mr. Russell's Testimony**

On January 12, 2006, the Commission entered an Order that, in part, provided the following guidance to the parties regarding the admissibility of the pre-filed testimony of Mr. Hamilton Russell:

1. Mr. Russell "may testify as to matters of fact that he witnessed as an employee of [NuVox]." (Order at 6);
2. To the extent that Mr. Russell's testimony "seeks to advocate or advance a position for the Joint Petitioners, it is subject to exclusion" as "inappropriate opinion testimony as to conclusions of law." (Order at 6); and
3. To the extent that Mr. Russell gives testimony "which seeks to advocate a position, such testimony would also appear to conflict with his duty of loyalty to BellSouth, and . . . BellSouth could also object to the testimony on those grounds." (Order at 6-7).

Consistent with the Commission's guidance, BellSouth respectfully informs the Commission that it does not anticipate making any objections regarding the two pages of supplemental testimony of Mr. Russell that was filed on August 4, 2005. That testimony is either factual in nature or does not seek to advocate or advance a position on the merits of the unresolved issues in this arbitration proceeding.

BellSouth understands that the Joint Petitioners will seek to move the written Rebuttal testimony of Mr. Russell, dated May 23, 2005, into the record during the hearing

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presented another witness to address their position on the substance of the unresolved issues in this arbitration, but they have declined to do so.

Thursday.<sup>2</sup> To the extent that Mr. Russell adopts this testimony during the hearing Thursday, BellSouth will object to the specific portions of the testimony that are stricken through in Attachment A. For the Commission's convenience, BellSouth has circled the operative language in each sentence that has been stricken through in order to demonstrate that the language is, in fact, that of an attorney that impermissibly advocates or advances a position on behalf of one client of the attorney's firm and against the interests of another client of the attorney's firm.

BellSouth also understands that the Joint Petitioners will seek to move the transcript of the testimony Mr. Russell presented during the June 1, 2005 hearing in this proceeding into the record during the hearing Thursday.<sup>3</sup> To the extent that Mr. Russell adopts this testimony during the hearing Thursday, BellSouth will object to the specific portions of the testimony that are stricken through in Attachment B, which has been marked in the manner described above. Depending on which portions of Mr. Russell's written Rebuttal testimony are admitted into the record during Thursday's hearing, some or all of the objections reflected in Attachment B may become moot.

### **C. Participation of Professor Freeman and Dr. Adams**

Additionally, by letter dated March 16, 2006, the Hearing Officer ruled that Professor John Freeman may not testify in this matter on behalf of the Joint Petitioners, but that he may appear and argue as co-counsel for the Joint Petitioners or move for leave to be heard as a friend of the Commission during Thursday's hearing. BellSouth believes that the legal issues related to BellSouth's potential objections have been fully vetted and that no further argument is necessary or appropriate.<sup>4</sup> BellSouth further notes that Professor Freeman is not simply a member of the public who may wish to be heard on the merits of the unresolved issues in this arbitration proceeding, but instead, he "has been asked by counsel for NuVox Communications, Inc." to review and comment upon BellSouth's position on the matter the Commission will consider Thursday.<sup>5</sup> BellSouth, therefore, does not believe that Professor Freeman should be heard as a friend of the Commission during Thursday's hearing.

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<sup>2</sup> This testimony previously was stricken from the record by an uncontested Order of the Hearing Officer. *See* Order Granting Motion to Strike Testimony, Order No. 2005-387 (July 20, 2005).

<sup>3</sup> This testimony previously was stricken from the record by an uncontested Order of the Hearing Officer. *See* Order Granting Motion to Strike Testimony, Order No. 2005-387 (July 20, 2005).

<sup>4</sup> These legal arguments already have been addressed in nearly a dozen filings and during two oral arguments in this docket.

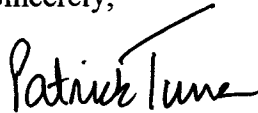
<sup>5</sup> *See* Affidavit of John Freeman at p. 2, ¶3.

The Honorable Charles Terreni  
March 21, 2006  
Page 4

If, however, the Commission decides to allow Professor Freeman to be heard as a friend of the Commission, BellSouth respectfully requests that Dr. Gregory Adams also be given the same opportunity to present his views to the Commission.

We hope that this letter and its attachments will be of assistance in the event that it remains necessary for the Commission to hold a hearing on Thursday.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick W. Turner". The signature is fluid and cursive, with a long horizontal stroke extending from the end.

Patrick W. Turner

PWT/nml  
Attachments  
626873

Page 1 of 1

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# ATTACHMENT A

**BEFORE THE  
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

**IN RE:**

**JOINT PETITION FOR ARBITRATION OF NEWSOUTH )  
COMMUNICATIONS CORP., KMC TELECOM V, INC., )  
KMC TELECOM III LLC, AND XSPEDIUS )  
COMMUNICATIONS, LLC ON BEHALF OF ITS )  
OPERATING SUBSIDIARIES XSPEDIUS MANAGEMENT )  
CO. SWITCHED SERVICES, LLC, XSPEDIUS MANAGEMENT )  
CO. OF CHARLESTON, LLC, XSPEDIUS MANAGEMENT CO. )  
OF COLUMBIA, LLC, XSPEDIUS MANAGEMENT CO. OF )  
GREENVILLE, LLC, AND XSPEDIUS MANAGEMENT CO. )  
OF SPARTANBURG, LLC. )**

**Docket No.  
2005-57-C**

**REBUTTAL TESTIMONY OF THE JOINT PETITIONERS**

**Marva Brown Johnson on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC  
James Mertz on behalf of KMC Telecom V, Inc. & KMC Telecom III LLC  
Hamilton Russell on behalf of NuVox Communications, Inc. and  
NewSouth Communications Corp.  
Jerry Willis on behalf of NuVox Communications, Inc. and  
NewSouth Communications Corp.  
James Falvey on behalf of the Xspedius Companies**

**May 23, 2005**

1 **PRELIMINARY STATEMENTS**

2 **WITNESS INTRODUCTION AND BACKGROUND**

3 **KMC: Marva Brown Johnson**

4 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

5 **A.** My name is Marva Brown Johnson. I am Senior Regulatory Counsel for KMC Telecom  
6 Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My  
7 business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.

8 **Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**  
9 **QUESTIONS REGARDING YOUR POSITION AT KMC, YOUR**  
10 **EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE**  
11 **COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF**  
12 **ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE**  
13 **THE SAME?**

14 **A.** Yes, the answers would be the same.

15 **Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING**  
16 **TESTIMONY.**

17 **A.** I am sponsoring testimony on the following issues <sup>1</sup>

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<sup>1</sup> The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33(B)&(C)
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	86/6-3(B), 88/6-5
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

1

2    **Q.     WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3    **A.     The purpose of my testimony is to offer support for the CLEC Position, as set forth**  
4        **herein, and associated contract language on the issues indicated in the chart above by**  
5        **rebutting the testimony provided by various BellSouth witnesses.**

6

7    **KMC: James M. Mertz**

8    **Q.     PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

9    **A.     My name is James M. Mertz. I am Director of Government Affairs for KMC Telecom**  
10       **Holdings, Inc., parent company of KMC Telecom V, Inc. and KMC III LLC. My**  
11       **business address is 1755 North Brown Road, Lawrenceville, Georgia 30043.**



1 Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF  
2 QUESTIONS REGARDING YOUR POSITION AT KMC, YOUR  
3 EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE  
4 COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF  
5 ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE  
6 THE SAME?

7 A. Yes, the answers would be the same.

8 Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING  
9 TESTIMONY.

10 A. I am prepared to adopt all testimony sponsored by my colleague, Ms. Marva Brown  
11 Johnson. In the event Ms. Johnson is unable to attend the hearing in this matter, then I  
12 am prepared to testify on the following issues:<sup>2</sup>

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2- 33(B)&(C)
Attachment 3: Interconnection	65/3-6
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Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

<sup>2</sup> The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

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2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth with  
4 respect to each unresolved issue subsequently herein, and associated contract language on  
5 the issues indicated in the chart above.

6

7 **NuVox/NewSouth: Hamilton ("Bo") Russell**

8 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

9 **A.** My name is Hamilton E. Russell, III. I am employed by NuVox as Vice President,  
10 Regulatory and Legal Affairs. My business address is 301 North Main Street, Suite  
11 5000, Greenville, SC 29601.

12 **Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**  
13 **QUESTIONS REGARDING YOUR POSITION AT NUVOX/NEWSOUTH, YOUR**  
14 **EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE**  
15 **COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF**  
16 **ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE**  
17 **THE SAME?**

18 **A.** Yes, the answers would be the same.

1 Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING  
2 TESTIMONY.

3 A. I am sponsoring testimony on the following issues:<sup>3</sup>

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 51/2-33(B) & (C)
Attachment 3: Interconnection	None
Attachment 6: Ordering	86/6-3(B),
Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

4

5 Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?

6 A. ~~The purpose of my testimony is to offer support for the CLEC Position, as set forth~~  
7 ~~herein, and associated contract language on the issues indicated in the chart above by~~  
8 ~~rebutting the testimony provided by various BellSouth witnesses.~~

9

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<sup>3</sup> The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

1    **NuVox/NewSouth: Jerry Willis**

2    **Q.    PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

3    **A.    My name is Jerry Willis. I was formerly the Executive Director — Network Cost and**  
4           **Budgeting for NuVox, from May 2000 until July 31, 2003. Since August 1, 2003 I have**  
5           **been retained as a consultant to NuVox. I can be reached care of NuVox witness**  
6           **Hamilton Russell at 2 North Main Street, Greenville, SC 29601.**

7    **Q.    IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF**  
8           **QUESTIONS       REGARDING       YOUR       RELATIONSHIP       WITH**  
9           **NUVOX/NEWSOUTH, YOUR EDUCATIONAL AND PROFESSIONAL**  
10          **BACKGROUND AND THE COMMISSIONS BEFORE WHICH YOU**  
11          **PREVIOUSLY HAVE TESTIFIED. IF ASKED THOSE SAME QUESTIONS**  
12          **TODAY, WOULD YOUR ANSWERS BE THE SAME?**

13   **A.    Yes, the answers would be the same.**

14   **Q.    PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING**  
15          **TESTIMONY.**

16   **A.    I am sponsoring testimony on the following issues:<sup>4</sup>**

General Terms and Conditions	None
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<sup>4</sup>    The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

Attachment 2: Unbundled Network Elements	37/2-19, 38/2-20
Attachment 3: Interconnection	65/3-6
Attachment 6: Ordering	88/6-5
Attachment 7: Billing	None
Supplemental Issues	None

1

2 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

3 **A.** The purpose of my testimony is to offer support for the CLEC Position, as set forth  
4 herein, and associated contract language on the issues indicated in the chart above by  
5 rebutting the testimony provided by various BellSouth witnesses.

6

7 **Xspedius: James Falvey**

8 **Q. PLEASE STATE YOUR FULL NAME, TITLE, AND BUSINESS ADDRESS.**

9 **A.** My name is James C. Falvey. I am the Senior Vice President of Regulatory Affairs for  
10 Xspedius Communications, LLC. My business address is 7125 Columbia Gateway  
11 Drive, Suite 200, Columbia, Maryland 21046.

1 Q. IN YOUR DIRECT TESTIMONY, YOU WERE ASKED A SERIES OF  
2 QUESTIONS REGARDING YOUR POSITION AT XSPEDIUS, YOUR  
3 EDUCATIONAL AND PROFESSIONAL BACKGROUND AND THE  
4 COMMISSIONS BEFORE WHICH YOU PREVIOUSLY HAVE TESTIFIED. IF  
5 ASKED THOSE SAME QUESTIONS TODAY, WOULD YOUR ANSWERS BE  
6 THE SAME?

7 A. Yes, the answers would be the same.

8 Q. PLEASE IDENTIFY ALL ISSUES FOR WHICH YOU ARE OFFERING  
9 TESTIMONY.

10 A. I am sponsoring testimony on the following issues:<sup>5</sup>

General Terms and Conditions	2/G-2, 4/G-4, 5/G-5, 6/G-6, 7/G-7, 9/G-9, 12/G-12
Attachment 2: Unbundled Network Elements	26/2-8, 36/2-18, 37/2-19, 38/2-20, 51/2-33(B) & (C)
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Attachment 7: Billing	97/7-3, 100/7-6, 101/7-7, 102/7-8, 103/7-9, 104/7-10

<sup>5</sup> The following issues have been settled: 1/G-1, 3/G-3, 8/G-8, 10/G-10, 11/G-11, 13/G-13, 14/G-14, 15/G-15, 16/G-16, 17/1-1, 18/1-2, 19/2-1, 20/2-2, 21/2-3, 22/2-4, 24/2-6, 25/2-7, 27/2-9, 28/2-10, 29/2-11, 30/2-12, 31/2-13, 32/2-14, 33/2-15, 34/2-16, 35/2-17, 39/2-21, 40/2-22, 41/2-23, 42/2-24, 43/2-25, 44/2-26, 45/2-27, 46/2-28, 47/2-29, 48/2-30, 49/2-31, 50/2-32, 51/2-33(A), 52/2-34, 53/2-35, 54/2-36, 55/2-37, 56/2-38, 57/2-39, 58/2-40, 59/2-41, 60/3-1, 61/3-2, 62/3-3, 63/3-4, 64/3-5, 66/3-7, 67/3-8, 68/3-9, 69/3-10, 70/3-11, 71/3-12, 72/3-13, 73/3-14, 74/4-1, 75/4-2, 76/4-3, 77/4-4, 78/4-5, 79/4-6, 80/4-7, 81/4-8, 82/4-9, 83/4-10, 84/6-1, 85/6-2, 86/6-3(A), 87/6-4, 89/6-6, 90/6-7, 91/6-8, 92/6-9, 93/6-10, 94/6-11, 95/7-1, 96/7-2, 98/7-4, 99/7-5, 105/7-11, 106/7-12, 107/11-1, and 115/S-8.

1    **Q.    WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

2    **A.**    The purpose of my testimony is to offer support for the CLEC Position, as set forth  
3           herein and associated contract language on the issues indicated in the chart above by  
4           rebutting the testimony provided by various BellSouth witnesses.

5

1 **GENERAL TERMS AND CONDITIONS<sup>6</sup>**  
2

3 *Item No. 1, Issue No. G-1 [Section 1.6]: This issue has been resolved.*

4 *Item No. 2, Issue No. G-2 [Section 1.7]: How should "End User" be defined?*

5 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 2/ISSUE G-2.

6 A. The term "End User" ~~should be defined as "the customer of a Party".~~ [Sponsored by: M.  
7 Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

8 Q. DOES BELL SOUTH PROVIDE ANY LEGITIMATE JUSTIFICATION TO  
9 SUPPORT ITS INSISTENCE ON A RESTRICTIVE DEFINITION OF END  
10 USER?

11 A. No. ~~BellSouth has no legitimate justification for insisting on a definition of End User~~  
12 ~~which it then seeks to use throughout the Agreement in a manner that could be~~  
13 ~~interpreted to artificially limit its obligations and restricts Joint Petitioners' rights.~~  
14 ~~BellSouth's position is belied by the fact that the Parties agree to treat ISPs as End Users~~  
15 ~~in Attachment 3 of the Agreement and that the industry has treated them as End Users for~~  
16 ~~more than 20 years.~~ If an ISP/ESP is our customer, it is the ultimate user of the  
17 telecommunications services we provide. The same holds true if our customer is a  
18 university, doctor's office, landlord, bakery, factory or another carrier. ~~Our negotiations~~  
19 ~~with BellSouth revealed that BellSouth had sought to use its definition to attempt to~~  
20 ~~inappropriately curb Joint Petitioners' right to use UNEs as inputs to their own wholesale~~

6 Please note that the disputed contract language for all unresolved issues addressed in this testimony is attached to Joint Petitioners Direct Testimony filed with the Commission on April 12, 2005 as Exhibit A. Because this is a dynamic process wherein the Parties continue to negotiate, Joint Petitioners will file, if necessary, an updated version of Exhibit A and an updated issues matrix prior to the hearing.



1 ~~service offerings. There is no sound legal or policy foundation for BellSouth's position.~~

2 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

3 Q. PLEASE RESPOND TO BELL SOUTH'S CONCERN THAT THE JOINT  
4 PETITIONERS' PROPOSED DEFINITION "COULD BE INTERPRETED IN  
5 SUCH A MANNER THAT ALLOWED THE JOINT PETITIONERS TO OBTAIN  
6 UNES IN VIOLATION OF THE ACT." [BLAKE AT 8:8-10]

7 A. ~~Our definition is simple and avoids the mischief that BellSouth sought to create with~~  
8 ~~respect to who is or isn't an ultimate end-user of telecommunications. To us, that inquiry~~  
9 ~~is meaningless. Our definition is intentionally designed to refer to any customer of either~~  
10 ~~Party so as to permanently upend BellSouth's initial attempt to essentially trick us into~~  
11 ~~giving up rights to use UNEs as wholesale service inputs. Joint Petitioners already have~~  
12 ~~agreed to use UNEs in compliance with the FCC's rules. Our definition is not intended~~  
13 ~~to restrict or expand our right to use UNEs (and we will agree to put language in the~~  
14 ~~Agreement that says just that). [Sponsored by: M. Johnson (KMC), H. Russell~~  
15 ~~(NVX/NSC), J. Falvey (XSP)]~~

16 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
17 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

18 A. ~~No. However, Joint Petitioners now believe that they have a commitment from~~  
19 ~~BellSouth that it will agree to a definition which will not be used to artificially limit~~  
20 ~~BellSouth's obligations and Joint Petitioners' rights with respect to UNEs (i.e., BellSouth~~  
21 ~~will not attempt to create limitations on our ability to use UNEs as wholesale service~~  
22 ~~inputs). However, we still don't have a language proposal from BellSouth to match that~~  
23 ~~commitment. Indeed, BellSouth has modified its proposed contract language twice and~~

1 we have proposed additional changes to BellSouth in an effort to settle this issue. With  
2 its latest proposal, BellSouth went from one definition of End User - the ultimate user of  
3 the Telecommunications Services - to three separate definitions: End User (upper case),  
4 Customer, and end user (lower case).<sup>7</sup> ~~Aside from the legal arguments, from a logistical~~  
5 ~~perspective, using three separate definitions throughout the Agreement is unnecessarily~~  
6 ~~complex and will cause confusion between the Parties. The risk of selecting the wrong~~  
7 ~~definition for use in the wrong place is high. Most problematic is that BellSouth~~  
8 ~~proposes to define the term "end user" twice, once in upper case to mean a retail~~  
9 ~~customer and once in lower case to mean the End User (in upper case) or any other retail~~  
10 ~~customer of a Telecommunications Service. Neither definition encompasses ISPs/ESPs~~  
11 ~~as retail customers - despite the Parties' apparent agreement that ISPs/ESPs can be retail~~  
12 ~~customers (they also can be wholesale customers). There is no good reason to use the~~  
13 ~~term "end user" twice, especially when the definition of end user cross references the~~  
14 ~~definition of End User. Such complexity will only serve to hinder the implementation of~~  
15 ~~the Agreement and may result in needless disputes between the Parties.~~

16 From a legal perspective, BellSouth's newly proposed definitions ~~if used or construed~~  
17 ~~improperly could unlawfully restrict the manner in which Joint Petitioners use UNEs.~~

18 The FCC has maintained that UNEs may be used by CLECs ~~without limitations imposed~~  
19 ~~by ILECs. Moreover, as stated in our Direct Testimony, there is no apparent "legal or~~

<sup>7</sup> This is the second revised proposal received from BellSouth since the filing of testimony in this proceeding. Joint Petitioners had worked with BellSouth to review the preceding proposal and each use of it in the interconnection agreement. BellSouth's proposed revision has caused Joint Petitioners to have to conduct that review from scratch. While Joint Petitioners have completed such a review and will continue to work with BellSouth to resolve this issue (most of BellSouth's suggested uses of the definitions were found by us to be in error), we continue to maintain that our definition - which may not be used to expand or to curtail rights to use UNEs, collocation and interconnection - is the most appropriate and is preferable to anything BellSouth has proposed thus far.

1 ~~policy basis to support BellSouth's apparent attempt to limit who can or cannot be~~  
2 ~~Petitioners' customers or whether Petitioners can serve them using UNEs.<sup>8</sup> Joint~~  
3 ~~Petitioners' Direct at 18. BellSouth's new multi-definition approach does nothing to~~  
4 ~~resolve the fact that is the use or misuse of the proposed definitions could unlawfully~~  
5 ~~limit the types of customers the Joint Petitioners may serve and stifling competition in~~  
6 ~~South Carolina. Accordingly, the Commission should adopt the definition proposed by~~  
7 ~~the Joint Petitioners, which is easily applied, and comports with all relevant guidelines on~~  
8 ~~how CLECs may use UNEs.<sup>8</sup> [Sponsored by: M. Johnson (KMC), H. Russell~~  
9 ~~(NVX/NSC), J. Falvey (XSP)]~~

10 *Item No. 3, Issue No. G-3 [Section 10.2]: This issue has been resolved.*

11 *Item No. 4, Issue No. G-4 [Section 10.4.1]: What should be*  
12 *the limitation on each Party's liability in circumstances other*  
13 *than gross negligence or willful misconduct?*

14 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 4/ISSUE G-4.

15 A. ~~In cases other than gross negligence and willful misconduct by the other party, or other~~  
16 ~~specified exemptions as set forth in CLECs' proposed language, liability should be~~  
~~limited to an aggregate amount over the entire term equal to 7.5% of the aggregate fees,~~  
~~charges or other amounts paid or payable for any and all services provided or to be~~

<sup>8</sup> BellSouth has inserted its new End User/Customer/end user definitions throughout the Agreement. Since the Joint Petitioners have addressed the definition issue in response to this Issue 2/G-2, we will not address every instance in which BellSouth has made this change. ~~Joint Petitioners have no objection to BellSouth's amendment of its own language proposals, provided that such amendments are not intended to expand burdens imposed on Joint Petitioners or to curtail the rights of Joint Petitioners. If either is the case, Joint Petitioners request that the Commission reject such language proposals, even if it is inclined to adopt any BellSouth language proposals (as a general manner, Joint Petitioners request that the Commission adopt each and every one of Joint Petitioners' language proposals and reject each and every one of BellSouth's language proposals).~~

1 ~~provided pursuant to the Agreement as of the day on which the claim arose.~~ [Sponsored  
2 ~~by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

3 Q. PLEASE EXPLAIN WHY JOINT PETITIONERS' PROPOSED LIMITATION  
4 OF LIABILITY LANGUAGE IS APPROPRIATE.

5 A. Joint Petitioners have proposed language that would impose financial liability, under a  
6 clear formula based on the percentage of the aggregate fees, charges or other amounts  
7 paid or payable for any and all services provided or to be provided pursuant to the  
8 Agreement, on the Party whose negligence caused harm to the other. Liability would be  
9 assessed up to a percentage cap on this aggregate amount as of the day the claim arose.  
10 ~~This provision is reasonable and appropriate. In order to ensure that the aggrieved Party is~~  
11 ~~compensated for the true value of the loss it incurred when service is disrupted or~~  
12 ~~impaired.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

13 Q. BELLSOUTH WITNESS BLAKE CLAIMS THAT JOINT PETITIONERS'  
14 PROPOSAL "MAKES NO SENSE." [BLAKE AT 12:10] DO YOU AGREE?

15 A. ~~No, obviously not. If Ms. Blake does not understand the proposal,~~ perhaps it is because  
16 ~~she had not participated in the negotiation sessions where it was discussed at length. If~~  
17 ~~BellSouth chooses to present a witness that does not understand the issue or claims not to~~  
18 ~~understand the issue, that is its prerogative. However, BellSouth's gambit does not make~~  
19 ~~the Joint Petitioners' proposal senseless.~~ As explained at length in our direct testimony,  
20 Joint Petitioners' proposal is hybrid proposal that is based upon what is typically found in  
21 commercial contracts. ~~It makes an incremental move away from the "elimination of~~  
22 ~~liability" language that BellSouth has enjoyed for far too long and toward what is more~~

1 typically found in commercial contracts ~~absent overwhelming market dominance by one~~

2 ~~party~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

3 Q. ARE JOINT PETITIONERS SEEKING "TO HAVE BELL SOUTH INCUR THE  
4 PETITIONERS' COST OF DOING BUSINESS"? [BLAKE AT 11:3]

5 A. No. ~~Ms. Blake's claim that the costs associated with BellSouth's negligence or "failures~~  
6 ~~by BellSouth to perform exactly as the contract requires" (BellSouth's own words) can~~  
7 ~~fairly be considered part of the "Petitioners' cost of doing business" is patently untenable.~~  
8 ~~See Blake at 11:3. BellSouth should be fully responsible for its negligent actions and for~~  
9 ~~any failure on its part to perform as the contract requires. In short, BellSouth's~~  
10 ~~negligence and other non-performance should be part of BellSouth's cost of doing~~  
11 ~~business and not that of the Joint Petitioners. Thus, it is BellSouth that seeks to engage in~~  
12 ~~inappropriate cost shifting here. To properly allocate responsibility for negligence or~~  
13 ~~non-performance, Joint Petitioners' proposed language for this issue should be adopted~~  
14 ~~and BellSouth's proposed language should be rejected~~ [Sponsored by: M. Johnson  
15 (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

16 Q. MS. BLAKE SUGGESTS THAT BELL SOUTH NEGLIGENCE OR NON-  
17 PERFORMANCE IS A RISK PROPERLY ALLOCATED TO JOINT  
18 PETITIONERS AS A RESULT OF SOME BUSINESS DECISION YOU MAKE.  
19 IS THAT CORRECT? [BLAKE AT 12:3-15:23]

20 A. No, not at all. Indeed, we are here today to tell the Commission that we do not  
21 voluntarily make a business decision to accept risks associated with BellSouth's  
22 negligence or non-performance. ~~With our proposed language, Joint Petitioners are~~  
23 ~~simply seeking to ensure that BellSouth incurs a meaningful level of liability for its own~~

1 negligence/non-performance. We also are attempting to limit BellSouth's ability to  
2 improperly shift those risks and associated costs to the Joint Petitioners. Notably, Joint  
3 Petitioners' proposal applies equally to themselves as it does to BellSouth – each Party  
4 must take some measure of responsibility for its negligent actions and other non-  
5 performance. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey  
6 (XSP)]

7 Q. PLEASE EXPLAIN YOUR CONTRACT LANGUAGE WHICH STATES THAT  
8 THE PROPOSED LIABILITY FORMULA WOULD BEGIN AS OF THE DAY  
9 THE CLAIM AROSE. [BLAKE AT 12:11-12; 13:1-6]

10 A. In an effort to appease BellSouth's prior concern that the Joint Petitioners' proposed  
11 language could provide incentive to Joint Petitioners to wait to file claims until several  
12 months after the harm occurred in order to increase BellSouth's exposure, Joint  
13 Petitioners revised their language. Accordingly, as now proposed, BellSouth's liability  
14 exposure would begin the day on which the claim arose. Therefore, there could be no  
15 "gaming" of the system, whereby the Joint Petitioners could hold off filing of a  
16 negligence claim for several months to increase the amount of potential liability under the  
17 "rolling" 7.5% cap. This is a significant concession on the part of the Joint Petitioners to  
18 fully address BellSouth's concern.

19 Despite the concession offered by Joint Petitioners, BellSouth now claims that the  
20 Joint Petitioners could "inappropriately argue that the 'day the claim arose' was at the  
21 end of the Agreement." See Blake at 13:1-2. BellSouth appears to be intent on creating  
22 problems where there are none. To be sure, either Party could inappropriately argue a  
23 position in almost any given context. It is difficult to contract around all contingencies –

1 especially with respect to behavior that would not be considered to be commercially  
2 reasonable. The true test, however, should not be what is possible to argue but instead  
3 should be what is probably likely to succeed when argued. In that sense, it appears that  
4 Ms. Blake's manufactured concern regarding Joint Petitioners' ability to disguise the day  
5 upon which a claim arose is both misplaced and overwrought.

6 Let us provide an example or two to illustrate. If one of the Joint Petitioners incurred  
7 harm due to a BellSouth negligent act, say, for example, a BellSouth truck hit one of the  
8 Petitioner's facilities, under the proposed language, there would be no question as to the  
9 day the claim arose. Similarly if a BellSouth employee negligently damaged one of the  
10 Petitioner's collocation sites, and that caused Petitioner's customers to lose service,  
11 again, there would be no question as to the day the claim arose. Under both scenarios,  
12 there is only one day on which that claim arose. BellSouth is simply searching for any  
13 means to avoid a new limitation of liability clause that provides Joint Petitioners with  
14 adequate protection from BellSouth negligent acts. It is simply time to hold BellSouth  
15 accountable for its own negligence and to stop BellSouth from shifting those costs to its  
16 competitors. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey  
17 (XSP)]

18 Q. BELLSOUTH APPEARS TO ASSERT THAT "TELRIC" PRICING  
19 NECESSITATES ITS ELIMINATION OF LIABILITY PROPOSAL. IS THAT  
20 POSITION WELL FOUNDED? [BLAKE AT 11:7-20]

21 A. ~~No.~~ BellSouth already factors the costs of insurance into its TELRIC pricing. ~~Thus, Ms.~~  
22 ~~Blake's apparent claim that BellSouth's TELRIC prices were premised on a no-~~  
23 ~~insurance/no-liability scenario seems~~ fundamentally off-base In case there is any doubt,

1 let us make clear that Joint Petitioners are not in the business of insuring BellSouth  
2 against any and all liability attributable to BellSouth's negligence or non-performance.  
3 Moreover, ~~Ms. Blake ignores the fact that BellSouth refuses to provide many of the~~  
4 ~~elements and services offered under the Agreement at TELRIC compliant prices.~~ In  
5 several instances, BellSouth's refusal to offer TELRIC-based pricing has evolved into an  
6 arbitration issue. Examples of this would be multiplexing (27), line conditioning (38),  
7 the TIC (65), expedite charges (88), mass migration charges (94) and LEC identifier  
8 change charges (96). In certain other circumstances, Joint Petitioners accepted non-  
9 TELRIC-based pricing as part of a settlement of an issue or a set of issues. Examples of  
10 this would include certain aspects of interconnection trunk pricing, certain BellSouth  
11 service calls, and various instances where BellSouth tariffs are referenced for rates. In  
12 the end, this Agreement will contain certain elements and services at TELRIC-based  
13 pricing and others that are not. Thus, ~~even if BellSouth's reliance on TELRIC as an~~  
14 ~~excuse to shift responsibility for BellSouth negligence and non-performance to its~~  
15 ~~competitors was valid which, as explained above, it is not~~ this argument provides  
16 ~~BellSouth with no cover whatsoever for the many aspects of the Agreement for which~~  
17 ~~TELRIC pricing does not apply.~~ [Sponsored by: M. Johnson (KMC), H. Russell  
18 (NVX/NSC), J. Falvey (XSP)]



1 Q. MS. BLAKE ASSERTS THAT JOINT PETITIONERS' POSITION WITH  
2 RESPECT TO THIS ISSUE (AS WELL AS WITH RESPECT TO ITEMS 5, 6  
3 AND 7) IS PART OF SOME GRAND SCHEME THAT INVOLVES PUTTING  
4 CLECS AT A COMPETITIVE ADVANTAGE OVER BELL SOUTH. IS SHE  
5 RIGHT? [BLAKE AT 11:7-20]

6 A. ~~No, not at all. Again, BellSouth's negligence or non-performance is not a risk of our~~  
7 ~~business decisions. It is BellSouth that inappropriately seeks to shift risks here not us.~~  
8 ~~And, by seeking to shift the risks associated with BellSouth negligence or non-~~  
9 ~~performance to Joint Petitioners, it is BellSouth that is seeking an unfair competitive~~  
10 ~~advantage over Joint Petitioners. [Sponsored by: M. Johnson (KMC), H. Russell~~  
11 ~~(NVX/NSC), J. Falvey (XSP)]~~

12 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
13 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

14 A. ~~No. Ms. Blake's testimony is largely unfounded rhetoric designed to distract and steer~~  
15 ~~attention away from the real issue.<sup>9</sup> BellSouth proposes an elimination of liability~~  
16 ~~provision under which it seeks to saddle Joint Petitioners with the costs and risks of~~  
17 ~~BellSouth's negligent acts and non-performance. When the rhetoric is stripped away, it~~  
18 ~~is quite plain that Ms. Blake provides no legal or sound policy basis for BellSouth's~~  
19 ~~position. It is time for BellSouth to accept some of the risks of and take some~~  
20 ~~responsibility for its own actions. Joint Petitioners' language requires both BellSouth and~~

<sup>9</sup> ~~BellSouth continuously argues that its terms are industry standard, however, the AllTel~~  
~~Agreement attached as Exhibit B to Joint Petitioners' Direct Testimony undermines~~  
~~BellSouth's position.~~

1 ~~the Joint Petitioners to do this.~~ [Sponsored by: M. Johnson (KMC), H. Russell  
2 (NVX/NSC), J. Falvey (XSP)]

3  
4 **Item No. 5, Issue No. G-5 [Section 10.4.2]: To the extent  
that a Party does not or is unable to include specific  
limitation of liability terms in all of its tariffs and End User  
contracts (past, present and future), should it be obligated to  
indemnify the other Party for liabilities not limited?**

5 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 5/ISSUE G-5.

6 A. ~~Petitioners cannot limit BellSouth's liability in contractual arrangements wherein  
7 BellSouth is not a party. Moreover, Petitioners will not indemnify BellSouth in any suit  
8 based on BellSouth's failure to perform its obligations under this contract or to abide by  
9 applicable law. Finally, BellSouth (should not be able) to dictate the terms of service  
10 between Petitioners and their customers by, among other things, holding Petitioners liable  
11 for failing to mirror BellSouth's limitation of liability and indemnification provisions in  
12 CLEC's end user tariffs and/or contracts. To the extent that a CLEC does not, or is  
13 unable to, include specific elimination of liability terms in all of its tariffs and customer  
14 contracts (past, present and future), and provided that the non-inclusion of such terms is  
15 commercially reasonable in the particular circumstances, that CLEC should not be  
16 required to indemnify and reimburse BellSouth for that portion of the loss that would  
17 have been limited (as to the CLEC but not as to non-contracting parties such as  
18 BellSouth) had the CLEC included in its tariffs and contracts the elimination-of-liability  
19 terms that BellSouth was successful in including in its tariffs at the time of such loss.  
20 [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

1 Q. IT APPEARS THAT MS. BLAKE THINKS THIS ISSUE IS ABOUT SERVICE  
2 GUARANTEES, IS THAT THE CASE? [BLAKE AT 16:6-16]

3 A. No. ~~This issue is not about theoretical service guarantees that one Party or another could~~  
4 ~~offer its customers to distinguish otherwise comparable products. Rather, this issue is~~  
5 ~~simply about Joint Petitioners' unwillingness to guarantee (and assume indemnification~~  
6 ~~obligations to the extent they cannot) that they will for the life of the Agreement be able~~  
7 ~~to extract from their customers the same limitation of liability provisions that BellSouth~~  
8 ~~is able to extract.~~ Instead we have offered to abide by a "commercially reasonable"  
9 standard – ~~which is eminently reasonable.~~ The terms of our contracts with our customers  
10 ~~really should not be controlled directly or indirectly by BellSouth but should instead be~~  
11 ~~governed by what is commercially reasonable.~~

12 ~~BellSouth's proposal is not commercially reasonable. Once again, BellSouth~~  
13 ~~appears to insist that Joint Petitioners must serve as BellSouth's insurance company. We~~  
14 ~~won't do that voluntarily. We are not insurance companies and we are unwilling to~~  
15 ~~accept responsibility for BellSouth's non-performance. If there is a claim or valid theory~~  
16 ~~of liability under which third parties can sue BellSouth for non-performance or other~~  
17 ~~failure to abide by this Agreement, we have no legal obligation to ensure that BellSouth~~  
18 ~~can quash such claims or to indemnify BellSouth if it cannot. Moreover, there is no other~~  
19 ~~compelling public policy reason for us to do so.~~ If BellSouth's actions cause consumers  
20 ~~harm, BellSouth should be held accountable. In any event, there is simply no basis for~~  
21 ~~trying, as BellSouth does, to shift some of the responsibility for and risks of BellSouth's~~  
22 ~~failures to Joint Petitioners.~~

1 Finally, it bears noting that we can no more bind BellSouth to the terms of a service  
2 guarantee with a third party than we can bind third parties to the terms of this Agreement.

3 ~~The best resolution of this issue would be for the Agreement to contain no language on it~~

4 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

5 Q. IS BELL SOUTH CORRECT THAT PETITIONERS COULD IMPOSE “SELF-  
6 CREATED LIABILITY” ON BELL SOUTH BY VIRTUE OF PROMISING  
7 PERFECTION TO THEIR CUSTOMERS? [BLAKE AT 16:21-17:8]

8 A. ~~No. In refusing to agree to BellSouth’s proposed language for Section 10.4.2, Joint~~  
9 ~~Petitioners are not seeking to “pass on to BellSouth ... self-created liability” in the~~  
10 ~~manner Ms. Blake portrays. See Blake at 17:1. Joint Petitioners, however, insist that~~  
11 ~~they be able to conduct business in a commercially reasonable manner (which requires~~  
12 ~~them to mitigate damages and not to unreasonably create liability exposure) and that~~  
13 ~~BellSouth not be permitted to shirk all responsibility for its failure to abide by the~~  
14 ~~Agreement and to perform as specified therein. If we make unreasonable commitments~~  
15 ~~to our customers, it is not at all clear to us how we could seek to hold BellSouth~~  
16 ~~accountable for such commitments. Indeed, Joint Petitioners will agree to the duty to~~  
17 ~~mitigate damages, and thus BellSouth’s exposure, with respect to our end users.~~  
18 ~~Petitioners’ willingness to take on this duty demonstrates that we are not seeking to~~  
19 ~~impose unfair or unwarranted liability on BellSouth.~~ Rather, Petitioners are simply  
20 refusing to agree that all of our tariffs and contracts contain language that BellSouth —  
21 who is not a party to any such arrangement — believes is appropriate. *[Sponsored by:*  
22 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

1 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
2 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

3 A. ~~No. But, Ms. Blake's testimony makes it evident to us that BellSouth's primary concern~~  
4 ~~here is over instant payment service guarantees and BellSouth's potential for additional~~  
5 ~~liability attributable to its own failure~~ to abide by or perform as required by the  
6 Agreement. BellSouth's current proposed provision is ~~a needlessly blunt instrument~~ that  
7 ~~does not squarely address that concern and creates others in the process.~~ If BellSouth  
8 wanted to withdraw its current proposal and replace it with language to address its stated  
9 concern regarding potential liability for instant payment service guarantees, we would  
10 entertain the proposal and hopefully be able to reach an acceptable compromise on this  
11 issue. *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

12 Q. DO YOU HAVE ANYTHING YOU WISH TO ADD?

13 A. ~~Yes. BellSouth is placing undue reliance on its own over-generalization, mis-~~  
14 ~~construction and misconception of Joint Petitioners' tariffs.~~ As we have stated  
15 previously, our customers rarely purchase service from Joint Petitioners' tariffs. Like  
16 BellSouth, we use CSAs. Unlike BellSouth, we are prepared to testify that our CSAs do  
17 contain limitation of liability provisions that deviate from those found in our tariffs.  
18 ~~Thus, while BellSouth seeks to hinder our ability (by imposing additional costs) to agree~~  
19 ~~to commercially reasonable provisions that include less than the maximum limitation of~~  
20 ~~liability allowed by law, BellSouth seeks to retain its own unhindered right to do so and~~  
21 ~~thereby gain competitive advantage over Joint Petitioners.~~ Accordingly, BellSouth's  
22 proposed language is ~~anticompetitive and unnecessary~~ and it ~~should be rejected~~.  
23

1

*Item No. 6, Issue No. G-6 [Section 10.4.4]: Should the Agreement expressly state that liability for claims or suits for damages incurred by CLEC's (or BellSouth's) customers/End Users resulting directly and in a reasonably foreseeable manner from BellSouth's (or CLEC's) performance of obligations set forth in the Agreement are not indirect, incidental or consequential damages?*

2

3 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 6/ISSUE G-6.**

4 A. ~~An express statement is needed because the limitation of liability terms in the Agreement~~  
5 ~~should in no way be read so as to preclude damages that CLECs' customers incur as a~~  
6 ~~foreseeable result of BellSouth's performance of its obligations under the Agreement,~~  
7 ~~including its provisioning of UNEs and other services. Damages to customers that result~~  
8 ~~directly, proximately, and in a reasonably foreseeable manner from BellSouth's (or a~~  
9 ~~CLEC's) performance of obligations set forth in the Agreement that were not otherwise~~  
10 ~~caused by, or are the result of, a CLEC's (or BellSouth's) failure to act at all relevant~~  
11 ~~times in a commercially reasonable manner in compliance with such Party's duties of~~  
12 ~~mitigation with respect to such damage should be considered direct and compensable~~  
13 ~~under the Agreement for simple negligence or nonperformance purposes. [Sponsored~~  
14 ~~by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

15 **Q. PLEASE EXPLAIN WHAT TYPE OF LOSSES FOR WHICH JOINT**  
16 **PETITIONERS WANT TO BE MADE WHOLE BY BELL SOUTH UNDER**  
17 **SECTION 10.4.4.**

18 A. ~~Petitioners believe that BellSouth should be responsible for reasonably foreseeable~~  
19 ~~damages that are directly and proximately caused by BellSouth. As stated in the~~  
20 ~~Petitioners' direct testimony, this Agreement is a contract for wholesale services and,~~

1 therefore, liability to customers ~~must be contemplated and expressly included in the~~  
2 contract language. ~~In our view, these types of damages are not incidental, indirect or~~  
3 ~~consequential.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey  
4 (XSP)]

5 Q. MS. BLAKE STATES THAT THE PARTIES HAVE AGREED THAT THE  
6 CONTRACT SHALL PROVIDE THAT THERE WILL BE NO LIABILITY FOR  
7 INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES AND ASSERTS  
8 THAT JOINT PETITIONERS ARE IN SOME MANNER ATTEMPTING TO  
9 EVISCERATE THAT AGREEMENT. IS THAT AN ACCURATE AND FAIR  
10 REPRESENTATION OF THE DISPUTE UNDERLYING THIS ISSUE? [BLAKE  
11 AT 19:23-20:9]

12 A. ~~No. Joint Petitioners did not agree to one thing and then attempt to gut that agreement~~  
13 ~~with the added language we propose.~~ Rather our offer is (and has been) to eliminate  
14 liability for indirect, incidental, or consequential damages, provided that it is understood  
15 that such limitation is not to be construed in any way so as to eliminate the liability of a  
16 Party for claims or suits by damages by end users/customers of the other Party or by such  
17 other Party vis-à-vis (meaning "in relation to") its end users/customers to the extent that  
18 such damages "result directly and in a reasonably foreseeable manner from the first  
19 Party's performance of services hereunder". ~~We do not view such damages as indirect,~~  
20 ~~incidental, or consequential and we want the Agreement to be clear that we do not~~  
21 ~~voluntarily agree to do so.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC),  
22 J. Falvey (XSP)]

1 Q. MS. BLAKE ASSERTS OPPOSITION TO JOINT PETITIONERS' PROPOSAL  
2 BECAUSE IT IS LENGTHY, VAGUE AND IN HER WORDS "VIRTUALLY  
3 INDECIPHERABLE". DO YOU HAVE A RESPONSE TO THESE  
4 CRITICISMS? [BLAKE AT 20:21-21:2]

5 A. Yes. ~~First, if Ms. Blake has any real difficulty understanding our proposal it is likely~~  
6 ~~because she chooses not to understand it~~ Ms. Blake did not participate in the majority of  
7 negotiations session where this issue and the Joint Petitioners' proposal were discussed  
8 and explained at great length. We did not leave those discussions with the impression  
9 that BellSouth didn't understand our proposal, but rather that they simply would not  
10 agree to it. ~~So as not to needlessly expend the Commission's or Joint Petitioners'~~  
11 ~~resources, BellSouth should in the future take better care to ensure that its witnesses are~~  
12 ~~fully briefed with respect to all prior negotiations.~~

13 The language proposed by Petitioners here and that is disputed by BellSouth is notably  
14 shorter than the language proposed by BellSouth and disputed by the Joint Petitioners on  
15 the previous issue. The point is that lengthy language is not necessarily good or bad.  
16 Nor is it necessarily confusing. Sometimes, contract language becomes lengthy as a  
17 result of efforts to ensure that it is clear and fair. ~~In this case, Joint Petitioners took care~~  
18 ~~to delineate a precise standard that is neither vague nor difficult to implement~~ We even  
19 took care to assure BellSouth that it was our intent to conduct ourselves in a  
20 commercially reasonable manner and to accept standard duties to mitigate damages.  
21 Nevertheless, if BellSouth wants a shorter proposal, we are willing to strike the final  
22 three or so lines of it so that the disputed language would end with the clause "to the  
23 extent such damages result directly and in a reasonably foreseeable manner from the first



1 Party's performance of services hereunder". The remaining part of the disputed language  
2 proposed by Joint Petitioners can be stricken: "and were not and are not directly and  
3 proximately caused by or the result of such Party's failure to act at all relevant times in a  
4 commercially reasonable manner in compliance with such Party's duties of mitigation  
5 with respect to such damage". That language was intended to provide BellSouth with  
6 assurances that the proposal is fair and reasonable – we will not insist on it. ~~At bottom,~~  
7 ~~Ms. Blake does not explain why she thinks this provision would be difficult or confusing~~  
8 ~~to implement or whether it is simply BellSouth's intention to make this provision difficult~~  
9 ~~or confusing to implement. Neither case presents a valid reason for rejecting Joint~~  
10 ~~Petitioners' proposal.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.  
11 Falvey (XSP)]

12 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
13 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

14 A. ~~No.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

15 

Item No. 7, Issue No. G-7 [Section 10.5]: What should the indemnification obligations of the parties be under this Agreement?
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16  
17 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 7/ ISSUE G-7.

18 A. ~~The Party providing service under the Agreement should be indemnified, defended and~~  
19 ~~held harmless by the Party receiving services against any claim for libel, slander or~~  
20 ~~invasion of privacy arising from the content of the receiving Party's own~~  
21 ~~communications. Additionally, customary provisions should be included to specify that~~  
22 ~~the Party receiving services under the Agreement should be indemnified, defended and~~

1 ~~held harmless by the Party providing services against any claims, loss or damage to the~~  
2 ~~extent reasonably arising from: (1) the providing Party's failure to abide by Applicable~~  
3 ~~Law, or (2) injuries or damages arising out of or in connection with this Agreement to the~~  
4 ~~extent caused by the providing Party's negligence, gross negligence or willful misconduct.~~

5 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

6 **Q. PLEASE EXPLAIN THE INDEMNIFICATION LANGUAGE THAT JOINT**  
7 **PETITIONERS HAVE PROPOSED.**

8 A. Joint Petitioners seek to be indemnified for claims of libel, slander, or invasion of  
9 privacy. On that, the Parties agree. Petitioners also seek to be indemnified for claims  
10 arising from (1) BellSouth's failure to comply with the law, or (2) damages or injuries  
11 arising from BellSouth's negligence, gross negligence, or willful misconduct. ~~This level~~  
12 ~~of indemnification is not unreasonable.~~ Moreover, Joint Petitioners, as the Parties  
13 receiving/purchasing most services under the Agreement, refuse to indemnify BellSouth  
14 against all end user claims that could potentially arise as a result of our reliance on  
15 BellSouth's commitment to abide by and perform as required under this Agreement. ~~A~~  
16 ~~Party that fails to abide by its legal obligations should incur the damages arising from~~  
17 ~~such conduct. A Party that is negligent should bear the cost of its own mistakes.~~  
18 ~~BellSouth should not be permitted to shift those costs to the Joint Petitioners. Thus, Joint~~  
19 ~~Petitioners do not believe that the party receiving services should indemnify the party~~  
20 ~~providing services from "any claim, loss or damage claimed by the end user of the party~~  
21 ~~receiving services arising out of the Agreement."~~ *[Sponsored by: M. Johnson (KMC), H.*  
22 *Russell (NVX/NSC), J. Falvey (XSP)]*

1 Q. IS BELL SOUTH CORRECT IN ASSERTING THAT THE JOINT  
2 PETITIONERS' PROPOSED LANGUAGE IS INAPPROPRIATE BECAUSE  
3 THIS IS NOT A COMMERCIAL AGREEMENT? [BLAKE AT 22:8-24]

4 A. ~~No. This Agreement, although it contains terms that are the subject of federal and state~~  
5 ~~statutes and regulations, is clearly a commercial agreement. BellSouth's efforts to impart~~  
6 ~~magical meaning into the words "commercial agreement" are unavailing. Indeed, we are~~  
7 ~~not aware of any State Commission that has bought into BellSouth's argument that there~~  
8 ~~is a body of agreements called interconnection agreements and another body of~~  
9 ~~agreements called commercial agreements and that the two are mutually exclusive.~~  
10 Notably, there are no regulations of which we are aware governing what the  
11 indemnification provisions of interconnection agreements must be. ~~Thus, the language in~~  
12 ~~Section 10.4 should reflect and comport with general commercial practice. It is generally~~  
13 ~~accepted commercial practice to ensure that one Party does not pay for or otherwise~~  
14 ~~suffer as a result of the other's mistakes or misconduct. That principle is embodied in~~  
15 ~~Joint Petitioners' proposed language and not in the commercially unreasonable language~~  
16 ~~proposed by BellSouth.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.  
17 Falvey (XSP)]

18 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
19 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

20 A. ~~No. BellSouth once again seeks to shift to Joint Petitioners the risks and costs associated~~  
21 ~~with its own non-compliance and misconduct. Joint Petitioners' proposal rejects that~~  
22 ~~approach, reflects commercially reasonable practice and should be accepted.~~ [Sponsored  
23 by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

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*Item No. 8, Issue No. G-8 [Section 11.1]: This issue has been resolved.*

*Item No. 9, Issue No. G-9 [Section 13.1]: Should a court of law be included in the venues available for initial dispute resolution?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 9/ISSUE G-9.

A. ~~Either Party should be able to petition the Commission, the FCC, or a court of law for resolution of a dispute. No legitimate dispute resolution venue should be foreclosed to the Parties. The industry has experienced difficulties in achieving efficient regional dispute resolution. Moreover, there is an ongoing debate as to whether State Commissions have jurisdiction to enforce agreements (CLECs do not dispute that authority) and as to whether the FCC will engage in such enforcement. There is no question that courts of law have jurisdiction to entertain such disputes (see GTC, Sec. 11.5), indeed, in certain instances, they may be better equipped to adjudicate a dispute and may provide a more efficient alternative to litigating before up to 9 different State Commissions or to waiting for the FCC to decide whether it will or won't accept an enforcement role given the particular facts. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

1 Q. BELLSOUTH HAS PROPOSED REVISED LANGUAGE THAT WOULD  
2 ALLOW DISPUTES TO GO TO A COURT OF LAW IN CERTAIN INSTANCES.  
3 WHY IS THAT LANGUAGE NOT ACCEPTABLE? [BLAKE AT 23:13-19; 24:19-  
4 25]

5 A. ~~As explained in our direct testimony, BellSouth's proposal unnecessarily builds in~~  
6 ~~opportunities for dispute over when the conditions for taking a case to court have been~~  
7 ~~met and imposes inefficiencies by requiring that certain claims be separated. We would~~  
8 ~~prefer not to close or partially restrict the option of going to a court of competent~~  
9 ~~jurisdiction for dispute resolution.~~ When faced with the decision to file a complaint at the  
10 Commission, the FCC or a court, we will have to weigh the pros and cons of each venue  
11 (expertise and scope of jurisdiction would be among the factors) and assess them based  
12 on the totality of the dispute between the Parties – which could easily extend beyond the  
13 South Carolina Agreement. ~~We find ourselves in need of efficient and effective~~  
14 ~~enforcement regionally – not just in South Carolina.~~ Accordingly, we will not voluntarily  
15 give up the option of going to a court of competent jurisdiction, ~~as such a court may~~  
16 ~~provide a means by which we can avoid having to litigate nine times over (or more) or to~~  
17 ~~discount settlement positions as a result of regional dispute resolution difficulties which~~  
18 ~~BellSouth has used to its advantage and seeks to preserve~~ [Sponsored by: M. Johnson  
19 (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

20 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
21 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

22 A. ~~No, not at this time.~~ However, we will continue to consider potential compromises and  
23 may respond to BellSouth's latest proposal (which is a considerable improvement over its

1 initial proposal) with new language designed to settle or at least narrow the issue further.

2 *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

3  
4 **Item No. 10, Issue No. G-10 [Section 17.4]: *This issue has been resolved.***

5 **Item No. 11, Issue No. G-11 [Sections 19, 19.1]: *This issue has been resolved.***

6 **Item No. 12, Issue No. G-12 [Section 32.2]: *Should the Agreement explicitly state that all existing state and federal laws, rules, regulations, and decisions apply unless otherwise specifically agreed to by the Parties?***

7 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 12/ISSUE G-12.**

8 A. ~~Nothing in the Agreement should be construed to limit a Party's rights or exempt a Party~~  
9 ~~from obligations under Applicable Law, as defined in the Agreement, except in such~~  
10 ~~cases where the Parties have explicitly agreed to a limitation or exemption. Moreover,~~  
11 ~~silence with respect to any issue, no matter how discrete, should not be construed to be such~~  
12 ~~a limitation or exception. This is a basic legal tenet and is consistent with both federal~~  
13 ~~and Georgia law (agreed to by the parties), and it should be explicitly stated in the~~  
14 ~~Agreement in order to avoid unnecessary disputes and litigation that has plagued the~~  
15 ~~Parties in the past. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey~~  
16 ~~(XSP)]~~

1 Q. BELLSOUTH CLAIMS JOINT PETITIONERS SEEK "TWO OPPORTUNITIES  
2 TO NEGOTIATE AND/OR ARBITRATE THE TERMS OF THE CONTRACT".  
3 HOW DO YOU RESPOND TO THIS ACCUSATION? [BLAKE AT 25:16-18]

4 A. ~~Our first response is that it isn't true. The Parties have agreed to abide by Georgia law,~~  
5 ~~and Georgia law just like any other that we know of holds that applicable law existing~~  
6 ~~at the time of contracting becomes part of the contract as though expressly stated therein,~~  
7 ~~unless the parties voluntarily and expressly agree to adhere to other standards that~~  
8 ~~effectuate an exception to or displacement of applicable legal requirements. As~~  
9 ~~explained at length in our direct testimony, BellSouth seeks to turn principles of~~  
10 ~~contracting on their head by insisting on a contract where exceptions to and the~~  
11 ~~displacement of applicable legal requirements is implied as a matter of course. As our~~  
12 ~~counsel will surely explain in briefing, Georgia law requires exceptions, or other~~  
13 ~~displacements of applicable legal requirements, to be express. They cannot be implied.~~  
14 ~~In short, exceptions are not the rule.~~

15 Moreover, ~~as we have said repeatedly, we did not conduct negotiations or engage in~~  
16 ~~this arbitration so that we could give away something for nothing. If BellSouth wants to~~  
17 ~~be exempt from or to displace an applicable legal requirement, it should have proposed~~  
18 ~~explicit language regarding the specific aspects of any federal or state statute, rule or~~  
19 ~~order to which they did not want to have to comply and they should have been prepared~~  
20 ~~to offer an appropriate concession to us in exchange for the right or rights they seek to~~  
21 ~~have us give up.~~

1 Instead, ~~BellSouth's latest proposal seeks to contractualize a gambit wherein BellSouth~~  
2 ~~can claim that it is not obligated to comply with Applicable Law if it is not copied into or~~  
3 ~~otherwise sufficiently referenced in the Agreement (we are not clear as to what would~~  
4 ~~pass muster).~~ Petitioners' language already references all Applicable Law and it  
5 underscores their intent not to deviate from already agreed-upon Georgia law on this  
6 point. There are thousands of pages of applicable federal and state statutes, rules and  
7 orders that have not been copied into or regurgitated in some manner in the Agreement.  
8 ~~We are not interested in providing BellSouth with the opportunity to say that the~~  
9 ~~requirements contained therein apply only prospectively after we detect and notify~~  
10 ~~BellSouth of its non-compliance therewith.~~ [Sponsored by: M. Johnson (KMC), H.  
11 Russell (NVX/NSC), J. Falvey (XSP)]

12 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
13 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

14 A. ~~No. We are not prepared to trade tried and true principles of contracting for BellSouth's~~  
15 ~~"catch me and we'll fix it going forward" proposal.~~ Our agreement to abide by Georgia  
16 law did not contemplate and does not include such a ~~perverse exception~~ to that body of  
17 ~~law.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

19 Item No. 13, Issue No. G-13 [Section 32.3]: ***This issue has been resolved.***

20 Item No. 14, Issue No. G-14 [Section 34.2]: ***This issue has been resolved.***

21 Item No. 15, Issue No. G-15 [Section 45.2]: ***This issue has been resolved.***



*Item No. 16, Issue No. G-16 [Section 45.3]: This issue has been resolved.*

### **RESALE (ATTACHMENT 1)**

*Item No. 17, Issue No. 1-1 [Section 3.19]: This issue has been resolved.*

*Item No. 18, Issue No. 1-2 [Section 11.6.6]: This issue has been resolved.*

### **NETWORK ELEMENTS (ATTACHMENT 2)**

*Item No. 19, Issue No. 2-1 [Section 1.1]: This issue has been resolved.*

*Item No. 20, Issue No. 2-2 [Section 1.2]: This issue has been resolved.*

*Item No. 21, Issue No. 2-3 [Section 1.4.1]: This issue has been resolved*

*Item No. 22, Issue No. 2-4 [Section 1.4.3]: This issue has been resolved.*

*Item No. 23, Issue No. 2-5 [Section 1.5]: What rates, terms, and conditions should govern the CLECs' transition of existing network elements that BellSouth is no longer obligated to provide as UNEs to other services?*

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

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Item No. 24, Issue No. 2-6 [Section 1.5.1]: *This issue has been resolved.*

Item No. 25, Issue No. 2-7 [Section 1.6.1]: *This issue has been resolved.*

Item No. 26, Issue No. 2-8 [Section 1.7]: *Should BellSouth be required to commingle UNEs or Combinations with any service, network element or other offering that it is obligated to make available pursuant to Section 271 of the Act?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 26/ISSUE 2-8.

A. ~~BellSouth should be required to "commingle" UNEs or Combinations of UNEs with any service, network element, or other offering that it is obligated to make available pursuant to Section 271 of the Act. By that we mean that BellSouth should be required to permit commingling and should be required to perform the functions necessary to commingle a Section 251 UNE or UNE combination with any wholesale service, including those obtained from BellSouth pursuant to any method other than Section 251 unbundling (this would include Section 271 unbundling). [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

Q. IS BELL SOUTH'S RELIANCE ON THE FCC'S TRO ERRATA APPROPRIATE?  
[BLAKE AT 30:17-31:8]

A. ~~No. In fact, BellSouth's reliance is misplaced. There is no FCC rule or order that states that BellSouth is permitted to place commingling restrictions on section 271 elements. The part of the FCC's errata relied upon by BellSouth was nothing more than an attempt to clean-up stray language from a section of the TRO addressing the commingling of section 251 UNEs with services provided for resale under section 251(c)(4). BellSouth's attempt to create by implication an affirmative adoption of commingling restrictions with~~

1 respect to section 271 elements ~~cannot withstand scrutiny~~, as it simply ~~cannot be squared~~  
2 with the FCC's commingling rules and the TRO language accompanying those rules.

3 Moreover, the fact that the errata also deleted the final sentence in footnote 1990 of the  
• 4 TRO is ~~fatal to BellSouth's position~~. Footnote 1990 originally read:

5 We decline to require BOCs, pursuant to section 271, to combine network  
6 elements that no longer are required to be unbundled under section 251. Unlike  
7 section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist contain  
8 no mention of "combining" and, as noted above, do not refer back to the  
9 combination requirement set forth in Section 251(c)(3). We also decline to apply  
10 our commingling rule, set forth in Part VII.A. above, to services that must be  
11 offered pursuant to these checklist items.

12 case, and footnote 1990 now reads:

13 We decline to require BOCs, pursuant to section 271, to combine network  
14 elements that no longer are required to be unbundled under section 251. Unlike  
15 section 251(c)(3), items 4-6 and 10 of section 271's competitive checklist contain  
16 no mention of "combining" and, as noted above, do not refer back to the  
17 combination requirement set forth in Section 251(c)(3).

18 Thus, it is ~~absolutely clear~~ that the FCC did not find that ILECs such as BellSouth are not  
19 required to commingle section 271 elements with section 251 UNEs. [Sponsored by: M.  
20 Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

22 Q. DOES THE D.C. CIRCUIT'S *USTA II* HOLDING REGARDING SECTION 271  
23 PROHIBIT THE COMMINGLING OF UNES, UNE COMBINATIONS, AND  
24 SERVICES? [BLAKE AT 31:23-32:15]

25 A. ~~No. The D.C. Circuit's *USTA II* holding discussed combining, not commingling.~~  
26 ~~BellSouth's reliance on the D.C. Circuit as grounds to reject Petitioners' commingling~~  
27 ~~language is therefore misplaced~~ [Sponsored by: M. Johnson (KMC), H. Russell  
28 (NVX/NSC), J. Falvey (XSP)]

1 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
2 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

3 A. ~~No. As stated in the Joint Petitioners direct testimony, the TRO concluded that CLECs~~  
4 ~~may commingle UNEs or UNE combinations with facilities or services it has obtained~~  
5 ~~from ILECs pursuant to a method other than unbundling under 251(e)(3) of the Act.~~  
6 ~~section 271 is another method of unbundling and BellSouth's attempt to isolate and~~  
7 ~~render useless section 271 elements must be squarely rejected.~~ [Sponsored by: M.  
8 Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

9 Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE  
10 GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.  
11 [BLAKE AT 7:1-5; 29:21-23]. DO YOU AGREE?

12 A. ~~Absolutely not. This issue has been part of the arbitration since day one and, per section~~  
13 ~~252, Joint Petitioners have a right to have this issue decided in this arbitration.~~ The fact-  
14 ~~that this issues is, as BellSouth says, "likely" to be addressed in the generic proceeding is~~  
15 ~~insufficient cause for removal.~~ The Florida Commission already ~~has rejected the same~~  
16 ~~request made by BellSouth there and we believe that Tennessee, Kentucky and others~~  
17 ~~will follow suit.~~ Unless the Joint Petitioners voluntarily agree to have an issue moved-  
18 ~~outside the arbitration, we do not believe that an issue can be removed at the request of~~  
19 ~~the respondent, BellSouth.~~ If BellSouth wishes to pursue its request, it ~~should file a~~  
20 ~~proper motion~~ and the Joint Petitioners should be afforded ample opportunity to file an-  
21 ~~opposition (as they were afforded in Florida, Tennessee and Kentucky).~~ [Sponsored by:  
22 M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]  
23

1 **Item No. 27, Issue No. 2-9 [Section 1.8.3]: This issue has been resolved.**

2 **Item No. 28, Issue No. 2-10 [Section 1.9.4]: This issue has been resolved.**

3 **Item No. 29, Issue No. 2-11 [Section 2.1.1]: This issue has been resolved.**

4 **Item No. 30, Issue No. 2-12 [Section 2.1.1.1]: This issue has been resolved.**

5 **Item No. 31, Issue No. 2-13 [Section 2.1.1.2]: This issue has been resolved.**

6 **Item No. 32, Issue No. 2-14 [Sections 2.1.2, 2.1.2.1, 2.1.2.2]: This issue has been resolved.**

7 **Item No. 33, Issue No. 2-15 [Section 2.2.3]: This issue has been resolved.**

8 **Item No. 34, Issue No. 2-16 [Section 2.3.3]: This issue has been resolved.**

9 **Item No. 35, Issue No. 2-17 [Sections 2.4.3, 2.4.4]: This issue has been resolved.**

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3 **Item No. 36, Issue No. 2-18 [Section 2.12.1]: (A) How**  
4 **should Line Conditioning be defined in the Agreement? (B)**  
5 **What should BellSouth's obligations be with respect to Line**  
6 **Conditioning?**

7  
8 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 36(A)/ISSUE 2-**  
9 **18(A).**

10 A. ~~Line Conditioning should be defined in the Agreement as set forth in FCC Rule 47 CFR~~  
11 ~~51.319 (a)(1)(iii)(A). [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.~~  
12 ~~Falvey (XSP)]~~

13 **Q. DOES BELL SOUTH'S PROPOSED LINE CONDITIONING DEFINITION**  
14 **COMPORT WITH THE GOVERNING FCC RULE? [FOGLE AT 3:13-4:9]**

15 A. ~~No. BellSouth ignores the FCC's line conditioning rule and instead attempts to replace it~~  
16 ~~with selected language from the TRO. The FCC, however, did not choose to replace the~~  
17 ~~language of its rule with the "definition" that BellSouth claims to embrace. As explained~~  
18 ~~in our direct testimony, BellSouth inappropriately seeks to conflate line conditioning~~  
19 ~~obligations with routine network modification requirements. The FCC's rules, however,~~  
20 ~~do not support BellSouth's position, as the line conditioning rule was not replaced with~~  
21 ~~the routine network modification rules and BellSouth's line conditioning obligations are~~  
22 ~~not limited to those routine network modifications it undertakes to provide DSL services~~  
23 ~~to its own customers. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.~~  
24 ~~Falvey (XSP)]~~

1 Q. DOES THE JOINT PETITIONERS' POSITION REQUIRE BELL SOUTH TO  
2 CREATE A "SUPERIOR NETWORK", AS MR. FOGLE CLAIMS? [FOGLE AT  
3 5:23]

4 A. ~~No. The FCC's line conditioning rules require BellSouth to modify its existing network~~  
5 ~~rather than develop a superior one. [Sponsored by: M. Johnson (KMC), H. Russell~~  
6 ~~(NVX/NSC), J. Falvey (XSP)]~~

7 Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU  
8 TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

9 A. ~~No. BellSouth's attempt to limit its line conditioning obligations to routine network~~  
10 ~~modifications it undertakes to provide DSL to its own customers is inconsistent with the~~  
11 ~~FCC's line conditioning rule and it should be rejected. Mr. Fogle claims that "the TRO~~  
12 ~~clarifies the definition of line conditioning set forth in Rule 51.319(a)(1)(iii) by limiting~~  
13 ~~its application to line conditioning 'that incumbent LECs regularly perform in order to~~  
14 ~~provide xDSL services to their own customers.'" See Fogle at 6:8-11. In other words,~~  
15 ~~Mr. Fogle claims that the FCC's definition of line conditioning has no meaning as the~~  
16 ~~ILECs (according to his novel theory) are not obligated to perform line conditioning.~~  
17 ~~That cannot be right. BellSouth acknowledges that FCC Rule 51.319(a) sets forth the~~  
18 ~~definition for line conditioning, but argues that the TRO itself only requires BellSouth to~~  
19 ~~perform line conditioning that it regularly performs for its own customers. See Fogle at~~  
20 ~~6:8-15. Although the FCC, in the TRO, opines that line conditioning can be seen as a~~  
21 ~~routine network modification that ILECs perform for their own DSL customers, the FCC~~  
22 ~~does not say that the line conditioning obligation is limited to such routine network~~  
23 ~~modifications that ILECs perform for their own DSL customers. Nor does it say that if~~

1 an ILEC refuses to provide such line conditioning to its own customers, it is relieved of  
2 its obligation to provide line conditioning to requesting CLECs. BellSouth must adhere  
3 to the definition of line conditioning in 51.319(a). The FCC in paragraph 172 of the UNE  
4 Remand Order held that ILECs "are required to condition loops so as to allow requesting  
5 carriers to offer advanced services." Subsequently, in paragraph 83 of the Line Sharing  
6 Order, the FCC expanded this obligation to apply to loops regardless of the loop length.  
7 If the FCC meant to curtail the obligation set forth therein with the TRO language Mr.  
8 Fogle quotes, it would certainly have modified the actual definition of line conditioning.  
9 The FCC did no such thing. By attempting to unilaterally limit its line conditioning  
10 obligations, BellSouth is trying to ensure that CLECs can do no more with the network  
11 than BellSouth is willing to do. As explained in our direct testimony, there are no  
12 compelling legal or policy rationales for tying us down in that manner and keeping us and  
13 our customers in that box. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC),  
14 J. Falvey (XSP)]

15 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 36(B)/ISSUE 2-  
16 18(B).

17 A. BellSouth should perform Line Conditioning in accordance with FCC Rule 47 CFR  
18 51.319 (a)(1)(iii). [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey  
19 (XSP)]



1 Q. DO YOU AGREE WITH BELL SOUTH'S ASSERTION THAT IT SHOULD  
2 ONLY PERFORM LINE CONDITIONING FUNCTIONS IN ACCORDANCE  
3 WITH FCC RULES TO THE EXTENT IT REGULARLY UNDERTAKES SUCH  
4 MODIFICATIONS FOR ITS OWN XDSL CUSTOMERS? [FOGLE AT 6:8-11]

5 A. ~~No. Mr. Fogle plainly indicates that BellSouth is only willing to comply with the FCC's~~  
6 ~~line conditioning rule to a certain extent. We insist on full compliance.~~ As reiterated  
7 throughout our testimony on this issue, ~~line conditioning is not synonymous with or~~  
8 ~~limited to the routine network modifications BellSouth undertakes to provide xDSL to its~~  
9 ~~own customers. Rather, BellSouth must provide line conditioning in accordance with~~  
10 ~~FCC's Rule 51.319(a)(1)(iii), which does not contain the limiting caveat Mr. Fogle adds.~~  
11 [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

12 Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU  
13 TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

14 A. ~~No. BellSouth is attempting to unilaterally limit its obligation to provide line~~  
15 ~~conditioning as required by the FCC's line conditioning rule. Since Joint Petitioners are~~  
16 ~~unwilling to accept it, the Commission should reject BellSouth's proposed language that~~  
17 ~~would eliminate certain aspects of BellSouth's obligation to provide and Joint~~  
18 ~~Petitioners' right to obtain line conditioning at TELRIC-compliant rates.~~ [Sponsored by:  
19 M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]  
20

1  
2 Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE  
3 GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.  
4 [BLAKE AT 7:1-5]. DO YOU AGREE?

5 A. ~~Absolutely not. This issue has been part of the arbitration since day one and, per section-~~  
6 ~~252, Joint Petitioners have a right to have this issue decided in this arbitration.~~ The fact  
7 that this issues is, as BellSouth says, "likely" to be addressed in the generic proceeding is  
8 ~~insufficient cause for removal.~~ Moreover, ~~Mrs. Blake's assertion seems wrong as there is~~  
9 ~~not a single line conditioning issue that has been identified on the regional issues list~~  
10 ~~being developed for the generic proceeding. Notably, the Florida Commission already~~  
11 ~~has rejected the same request made by BellSouth there and we believe that Tennessee,~~  
12 ~~Kentucky and others will follow suit.~~ Unless the Joint Petitioners voluntarily agree to  
13 ~~have an issue moved outside the arbitration, we do not believe that an issue can be~~  
14 ~~removed at the request of the respondent, BellSouth.~~ If ~~BellSouth~~ wishes to pursue its  
15 request, it ~~should file a proper motion~~ and the Joint Petitioners should be afforded ample  
16 opportunity to file an opposition (as they were afforded in Florida, Tennessee and  
17 Kentucky). *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey*  
18 *(XSP)]*

**Item No. 37, Issue No. 2-19 [Section 2.12.2]: Should the Agreement contain specific provisions limiting the availability of load coil removal to copper loops of 18,000 feet or less?**

1

2 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 37/ISSUE 2-19.**

3 **A.** The Agreement should not contain specific provisions limiting the availability of Line  
4 Conditioning (in this case, load coil removal) to copper loops of 18,000 feet or less in  
5 length. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

6 **Q. PLEASE EXPLAIN WHY THE AGREEMENT SHOULD REQUIRE**  
7 **BELLSOUTH TO REMOVE LOAD COILS, REGARDLESS OF LOOP LENGTH.**

8 **A.** Rule 51.319(a)(iii) states that load coils are a type of device that ILECs should remove  
9 from a loop at a CLEC's request. It does not state that load coils on loops over 18,000  
10 feet in length are exempt from removal. The FCC's *Line Sharing Order* held that ILECs  
11 are required to condition loops, *regardless of the loop length*, to allow requesting carriers  
12 to offer advanced services. BellSouth's proposed language thus once again fails to  
13 follow the FCC's line conditioning rule. *[Sponsored by: M. Johnson (KMC), J. Willis*  
14 *(NVX/NSC), J. Falvey (XSP)]*

15 **Q. IS IT RELEVANT THAT BELLSOUTH ASSERTS THAT IT DOES NOT**  
16 **REMOVE LOAD COILS FROM LOOPS OVER 18,000 FEET IN LENGTH FOR**  
17 **ITS OWN CUSTOMERS? [FOGLE AT 7:5-7]**

18 **A.** No. As explained above with respect to Item 36/Issue 2-18, FCC Rule 51.319(a)(iii) does  
19 not state that line conditioning is a routine network modification. Accordingly, BellSouth  
20 is not entitled to limit line conditioning activities to only those that it does to provide

1 xDSL to its retail customers. Notably, BellSouth claims that it will not remove load coils  
2 on long loops, even though it concedes that load coils impair DSL service. See Fogle at  
3 4:5-7. BellSouth should not foist its unwillingness to innovate on its competitors (or their  
4 customers). *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

5 **Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**  
6 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

7 **A.** No. Once again, we urge the Commission to reject BellSouth's attempt to impose upon  
8 Joint Petitioners its own reduced obligation re-write of the FCC's line conditioning  
9 requirements. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey*  
10 *(XSP)]*

11 **Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE**  
12 **GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.**  
13 **[BLAKE AT 7:1-5]. DO YOU AGREE?**

14 **A.** ~~Absolutely not. This issue has been part of the arbitration since day one and, per section~~  
15 ~~252, Joint Petitioners have a right to have this issue decided in this arbitration. The fact~~  
16 ~~that this issue is, as BellSouth says, "likely" to be addressed in the generic proceeding is~~  
17 ~~insufficient cause for removal. Moreover, Ms. Blake's assertion seems wrong as there is~~  
18 ~~not a single line conditioning issue that has been identified on the regional issues list~~  
19 ~~being developed for the generic proceeding. Notably, the Florida Commission already~~  
20 ~~has rejected the same request made by BellSouth there and we believe that Tennessee,~~  
21 ~~Kentucky and others will follow suit. Unless the Joint Petitioners voluntarily agree to~~  
22 ~~have an issue moved outside the arbitration, we do not believe that an issue can be~~  
23 ~~removed at the request of the respondent, BellSouth. If BellSouth wishes to pursue its~~

1 ~~request, it should file a proper motion and the Joint Petitioners should be afforded ample~~  
2 ~~opportunity to file an opposition (as they were afforded in Florida, Tennessee and~~  
3 ~~Kentucky). [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey~~  
4 ~~(XSP)]~~  
5

*Item No. 38, Issue No. 2-20 [Sections 2.12.3, 2.12.4]:  
Under what rates, terms and conditions should BellSouth be  
required to perform Line Conditioning to remove bridged  
taps?*

6  
7 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 38/ISSUE 2-20.**

8 **A.** Any copper loop being ordered by CLEC which has over 6,000 feet of combined bridged  
9 tap will be modified, upon request from CLEC, so that the loop will have a maximum of  
10 6,000 feet of bridged tap. This modification will be performed at no additional charge to  
11 CLEC. Line Conditioning orders that require the removal of other bridged tap should be  
12 performed at the rates set forth in Exhibit A of Attachment 2. *[Sponsored by: M.*  
13 *Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

14 **Q. WHAT IS THE PRIMARY DISAGREEMENT REGARDING THIS ISSUE?**

15 **A.** The primary disagreement is over BellSouth's desire to charge non-TELRIC Special  
16 Construction rates when Joint Petitioners request the removal of "any unnecessary and  
17 non-excessive bridged tap (bridged tap between 0 and 2,500 feet that serves no network  
18 design purpose)". See Fogle at 9:2-4. As we explained in our direct testimony, these  
19 terms are unacceptable. They leave the determination of what "serves no network design  
20 purpose" entirely to BellSouth's discretion. BellSouth would decide whether Joint  
21 Petitioners' customers can receive quality DSL or other advanced services that require

1 clean copper. In addition, the rates contained in BellSouth's Special Construction tariff,  
2 those that Joint Petitioners are able to discern, are prohibitively expensive. Application  
3 of such rates would in effect preclude us from obtaining a loop with less than 2,500 feet  
4 of bridged tap, thus leading to the impairment of DSL or other advanced services that we  
5 could provide (as BellSouth recognizes and seeks to ensure is the case). See Fogle at  
6 4:11-13. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

7 **Q. DO YOU AGREE WITH MR. FOGLE'S ASSERTION THAT "LINE**  
8 **CONDITIONING BEYOND WHAT BELL SOUTH PERFORMS FOR ITS OWN**  
9 **CUSTOMERS (WHICH IS BELL SOUTH'S ONLY OBLIGATION) OR IS**  
10 **WILLING TO VOLUNTARILY PROVIDE" TO CLECS IS NOT**  
11 **APPROPRIATELY PART OF THIS ARBITRATION, BUT SHOULD INSTEAD**  
12 **BE THE SUBJECT OF A SEPARATE AGREEMENT? [FOGLE AT 9:8-12]**

13 **A.** No. Repetition of a false position does not make it right. BellSouth's line conditioning  
14 obligation is not limited to what BellSouth decides it will routinely do for its own  
15 customers. Under Mr. Fogle's theory, BellSouth would be free to eliminate any line  
16 conditioning obligations, and based on his testimony, it appears that BellSouth thinks that  
17 it has (there is very little line conditioning that BellSouth will do on behalf of its own  
18 customers). We see nothing in Mr. Fogle's testimony or in the FCC's rule or orders that  
19 supports BellSouth's position that it unilaterally can determine the scope of its line  
20 conditioning obligations. Moreover, since line conditioning is part of the FCC's rules  
21 implementing section 251, it is plain to see that Mr. Fogle's claim that certain types of  
22 line conditioning are outside the scope of this arbitration is without merit. Joint  
23 Petitioners do not embrace BellSouth's attempt to undermine and avoid its agreement

1 filing obligations under section 252. *[Sponsored by: M. Johnson (KMC), J. Willis*  
2 *(NVX/NSC), J. Falvey (XSP)]*

3 **Q. BELLSOUTH CLAIMS THAT BRIDGED TAP THAT IS LESS THAN 2,500**  
4 **FEET DOES NOT IMPAIR THE PROVISION OF HIGH SPEED DATA**  
5 **TRANSMISSION. [FOGLE AT 9:14-10:3] PLEASE RESPOND.**

6 **A.** BellSouth makes this assertion without any justification or support. Indeed, Mr. Fogle  
7 said previously that bridged taps may diminish the capacity of the loop or subloop to  
8 transmit high-speed telecommunications. *See Fogle at 3:24-4:3.* Nevertheless, BellSouth  
9 is entitled to its opinions (regardless of whether they conflict). Those opinions, however,  
10 do not change BellSouth's obligations. Joint Petitioners should not be caged by what  
11 aspects of line conditioning BellSouth thinks is or is not necessary – or by what  
12 BellSouth is reluctantly willing to offer its own retail customers. And, just because  
13 BellSouth's policy was established by the Shared Loop Collaborative and BellSouth  
14 claims it is consistent with "industry standards for xDSL services," *see Fogle at 9:14-*  
15 *10:3,* does not mean that it does not harm the Petitioners. The Petitioners are attempting  
16 to create new innovative services to compete with BellSouth's dominating market share.  
17 The services we are seeking to preserve the ability to develop are not Shared Loop  
18 services. For example, as discussed in our direct testimony, some of the Petitioners are  
19 exploring technologies that may need bridged taps longer than 2,500 feet such as  
20 "Etherloop" and "G.SHDSL Long" technologies. *See Joint Petitioners at 62. [Sponsored*  
21 *by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

1 Q. DID ANYTHING MR. FOGLE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU  
2 TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

3 A. No. Items 36, 37 and 38 (Issues 2-18, 2-19 and 2-2) essentially turn on one question: do  
4 Joint Petitioners' have the right to insist upon full and unqualified compliance with the  
5 FCC's line conditioning rule or is BellSouth permitted to re-write the rule and impose its  
6 reduced obligation re-write on Joint Petitioners. To us, the answer is obvious: Joint  
7 Petitioners need not accept less than full compliance with the FCC's line conditioning  
8 rule. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

9 Q. MS. BLAKE STATES THAT THIS ISSUE SHOULD BE MOVED TO THE  
10 GENERIC PROCEEDING FOR CONSIDERATION AND RESOLUTION.  
11 [BLAKE AT 7:1-5]. DO YOU AGREE?

12 A. Absolutely not. This issue has been part of the arbitration since day one and, per section  
13 252, ~~Joint Petitioners have a right to have this issue decided in this arbitration.~~ The fact  
14 that this issue is, as BellSouth says, "likely" to be addressed in the generic proceeding is  
15 ~~insufficient cause for removal.~~ Moreover, ~~Ms. Blake's assertion seems wrong as there is~~  
16 ~~not a single line conditioning issue that has been identified on the regional issues list~~  
17 ~~being developed for the generic proceeding. Notably, the Florida Commission already,~~  
18 ~~has rejected the same request made by BellSouth there and we believe that Tennessee,~~  
19 ~~Kentucky and others will follow suit.~~ Unless the Joint Petitioners voluntarily agree to  
20 have an issue moved outside the arbitration, ~~we do not believe that an issue can be~~  
21 ~~removed at the request of the respondent, BellSouth.~~ If BellSouth wishes to pursue its  
22 request, ~~it should file a proper motion~~ and the Joint Petitioners should be afforded ample  
23 opportunity to file an opposition (as they were afforded in Florida, Tennessee and



1 ~~Kentucky~~). [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey  
2 (XSP)]

3  
4  
5 **Item No. 39, Issue No. 2-21 [Section 2.12.6]: This issue, including both subparts, has been resolved.**

6 **Item No. 40, Issue No. 2-22 [Section 2.14.3.1.1]: This issue has been resolved.**

7 **Item No. 41, Issue No. 2-23 [Sections 2.16.2.2, 2.16.2.3.1-5, 2.16.2.3.7-12]: This issue has been resolved.**

8 **Item No. 42, Issue No. 2-24 [Section 2.17.3.5]: This issue has been resolved.**

9 **Item No. 43, Issue No. 2-25 [Section 2.18.1.4]: This issue has been resolved.**

10 **Item No. 44, Issue No. 2-26 [Section 3.6.5]: This issue has been resolved.**

11 **Item No. 45, Issue No. 2-27 [Section 3.10.3]: This issue has been resolved.**

12 **Item No. 46, Issue No. 2-28 [Section 3.10.4]: This issue has been resolved.**

13 **Item No. 47, Issue No. 2-29 [Section 4.2.2]: This issue has been resolved as to both subparts.**

14 **Item No. 48, Issue No. 2-30 [Section 4.5.5]: This issue has been resolved.**

15 **Item No. 49, Issue No. 2-31 [Section 5.2.4]: This issue has been resolved.**

16 **Item No. 50, Issue No. 2-32 [Sections 5.2.5.2.1, 5.2.5.2.3, 5.2.5.2.4, 5.2.5.2.5, 5.2.5.2.7]: This issue has been resolved.**

**Item No. 51, Issue No. 2-33 [Sections 5.2.6, 5.2.6.1, 5.2.6.2, 5.2.6.2.1, 5.2.6.2.3]: (A) *This issue has been resolved.***

**(B) *Should there be a notice requirement for BellSouth to conduct an audit and what should the notice include?***

**(C) *Who should conduct the audit and how should the audit be performed?***

1  
2 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 51(B)/ISSUE 2-**  
3 **33(B).**

4 A. ~~It is the CLECs' position that to invoke its limited right to audit CLEC's records in order~~  
5 ~~to verify compliance with the high capacity EEL service eligibility criteria, BellSouth~~  
6 ~~should send a Notice of Audit to the CLECs, identifying the particular circuits for which~~  
7 ~~BellSouth alleges non-compliance and demonstrating the cause upon which BellSouth~~  
8 ~~rests its allegations. The Notice of Audit should also include all supporting~~  
9 ~~documentation upon which BellSouth establishes the cause that forms the basis of~~  
10 ~~BellSouth's allegations of noncompliance. Such Notice of Audit should be delivered to~~  
11 ~~the CLECs with all supporting documentation no less than thirty (30) days prior to the~~  
12 ~~date upon which BellSouth seeks to commence an audit. [Sponsored by: M. Johnson~~  
13 ~~(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

14 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU**  
15 **TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

16 A. ~~No.~~ This issue, in addition to encompassing what must be included with an EEL audit  
17 notice, also encompasses a dispute over the scope of any audit. ~~BellSouth's proposed~~  
18 ~~language is vague~~ and only states that it will identify the cause for the audit. This is  
19 because BellSouth believes that it is entitled to audit all of a Joint Petitioners' EELs upon

sket.

1 request. Obviously, this position is an affront to the "limited right to audit" the FCC  
2 made provision for and renders meaningless the "for cause" auditing standard adopted by  
3 the FCC and agreed to by the parties. Alternatively, the Joint Petitioners' proposed  
4 language is precise and states that BellSouth will identify the particular circuits for which  
5 BellSouth alleges non-compliance with the FCC mandated service eligibility criteria and  
6 provide documentation to justify its allegations of cause. Although BellSouth asserts that  
7 neither notice nor documentation are expressly required by the TRO, the TRO does  
8 require that audits be limited and that they only be conducted under a "for cause"  
9 auditing standard. Moreover, the FCC has recognized that the TRO only "basic  
10 principles for EEL audits" which the states can and should fill out. [Sponsored by: M.  
11 Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

12 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 51(C)/ISSUE 2-  
13 33(C).

14 A. The audit should be conducted by a third party independent auditor mutually agreed upon  
15 by the Parties. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey  
16 (XSP)]

17 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS SUB-ISSUE CAUSE YOU  
18 TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

19 A. No. The Joint Petitioners maintain, as reflected in their proposed language, that to ensure  
20 impartiality, the Parties must agree on the third-party auditor. While BellSouth's position  
21 is that mutual agreement would only serve to delay the audit, the Joint Petitioners submit  
22 that mutual agreement is essential to avoiding undue delay and protracted disputes over

1 ~~the independence of a proposed auditor in any given context.~~<sup>10</sup> Moreover, the fact that  
2 any auditor may pledge generally to remain AICPA-compliant does not solve individual  
3 issues or conflicts that may arise in a particular situation. The *Triennial Review Order*,  
4 through its incorporation of AICPA standards, requires that an auditor be independent in  
5 both appearance and fact. Thus, issues regarding the independence of an auditor must be  
6 resolved as they arise. (This also would be consistent with the Dispute Resolution  
7 process that will be incorporated into the Agreement's General Terms and Conditions, as  
8 neither side has championed a proposal that would not permit disputes to be addressed as  
9 they arise and are submitted to dispute resolution by the offended party. Federal law  
10 requires independence and it does not require a party to succumb to an unlawful audit  
11 which it may only complain about later. Accordingly, the Commission should adopt the  
12 language proposed by the Joint Petitioners to ensure that BellSouth does not have the  
13 ability to impose on Joint Petitioners an auditor that is not independent in appearance or  
14 ~~fact.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]  
15

<sup>10</sup> Although one might think of Deloitte and KPMG as independent auditors, the fact is that they cannot serve as independent auditors in all instances. Each of these firms has cited conflicts in rejecting a request of one of the Joint Petitioners to serve as an auditor. There also may be particular facts that bar (or should bar) an auditor from serving as an independent auditor. Those facts may not be previously known and may only become apparent during the course of an audit. Indeed, with respect to NuVox in particular, it does not appear that KPMG is qualified to serve as an independent auditor, as the two entities are involved in litigation regarding KPMG's breach of a nondisclosure agreement pertaining to an ongoing EEL audit.

1 Q. MS. BLAKE STATES THAT THIS ISSUE (INCLUSIVE OF BOTH SUB-PARTS)  
2 SHOULD BE MOVED TO THE GENERIC PROCEEDING FOR  
3 CONSIDERATION AND RESOLUTION. [BLAKE AT 32:25-27; 7:1-4]. DO YOU  
4 AGREE?

5 A. Absolutely not. This issue has been part of the arbitration since day one and, per section  
6 252, Joint Petitioners have a right to have this issue decided in this arbitration. The fact  
7 that this issues is, as BellSouth says, "likely" to be addressed in the generic proceeding is  
8 insufficient cause for removal. Notably, the Florida Commission already has rejected the  
9 same request made by BellSouth there and we believe that Tennessee, Kentucky and  
10 others will follow suit. Unless the Joint Petitioners voluntarily agree to have an issue  
11 moved outside the arbitration, we do not believe that an issue can be removed at the  
12 request of the respondent, BellSouth. If BellSouth wishes to pursue its request, it should  
13 file a proper motion and the Joint Petitioners should be afforded ample opportunity to file  
14 an opposition (as they were afforded in Florida, Tennessee and Kentucky). [Sponsored  
15 by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

16 *Item No. 52, Issue No. 2-34 [Section 5.2.6.2.3]: This issue  
has been resolved.*

17 *Item No. 53, Issue No. 2-35 [Section 6.1.1]: This issue has  
been resolved.*

18 *Item No. 54, Issue No. 2-36 [Section 6.1.1.1]: This issue  
has been resolved.*

19 *Item No. 55, Issue No. 2-37 [Section 6.4.2]: This issue has  
been resolved.*

20 *Item No. 56, Issue No. 2-38 [Sections 7.2, 7.3]: This issue  
has been resolved.*

Item No. 57, Issue No. 2-39 [Sections 7.4]: ***This issue has been resolved.***

Item No. 58, Issue No. 2-40 [Sections 9.3.5]: ***This issue has been resolved.***

Item No. 59, Issue No. 2-41 [Sections 14.1]: ***This issue has been resolved.***

### **INTERCONNECTION (ATTACHMENT 3)**

Item No. 60, Issue No. 3-1 [Section 3.3.4 (KMC, NSC, NVX/NSC), 3.3.3 XSP]: ***This issue has been resolved.***

Item No. 61, Issue No. 3-2 [Section 9.6 and 9.7]: ***This issue has been resolved.***

Item No. 62, Issue No. 3-3 [Section 10.7.4, 10.9.5, and 10.12.4]: ***This issue has been resolved.***

Item No. 63, Issue No. 3-4 [Section 10.8.6, 10.10.6 and, 10.13.5]: ***This issue has been resolved.***

Item No. 64, Issue No. 3-5 [Section 10.5.5.2, 10.5.6.2 and 10.7.4.2]: ***This issue has been resolved.***

Item No. 65, Issue No. 3-6 [Section 10.8.1, 10.10. 1]:  
***Should BellSouth be allowed to charge the CLEC a Transit Intermediary Charge for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic?***

**Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 65/ISSUE 3-6.**

**A.** BellSouth should not be permitted to impose upon CLECs a Transit Intermediary Charge ("TIC") for the transport and termination of Local Transit Traffic and ISP-Bound Transit Traffic. The TIC is a non-TELRIC based additive charge which exploits BellSouth's market power and is discriminatory. [Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]

1 **Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE IS APPROPRIATE**  
2 **WITH REGARD TO THE TIC CHARGE?**

3 **A.** The Petitioners' language – which excludes the TIC – is appropriate for the obvious  
4 reason that any charges for BellSouth's transiting services should be at TELRIC-based  
5 rates. Moreover, the Commission has never established a TELRIC-based rate for the TIC  
6 charge and BellSouth already collects elemental rates for switching and common  
7 transport to recover its costs associated with providing the transiting functionality.  
8 *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

9 **Q. IS BELL SOUTH CORRECT IN ITS ASSERTION THAT IT IS NOT REQUIRED**  
10 **TO PROVIDE A TRANSIT TRAFFIC FUNCTION BECAUSE IT IS NOT A**  
11 **SECTION 251 OBLIGATION UNDER THE ACT? [BLAKE AT 34:20-22]**

12 **A.** No, BellSouth is not correct. As explained in our direct testimony, transiting is an  
13 interconnection obligation firmly ensconced in section 251 of the Act. Moreover, this  
14 transiting functionality has been included in BellSouth interconnection agreements for  
15 nearly 8 years. BellSouth already has agreed to continue providing transit services to  
16 Joint Petitioners under the Agreement – thus, once again, this issue is not about whether  
17 BellSouth will provide transit services to Joint Petitioners.

18 In any event, we believe that BellSouth's transiting service is certainly an obligation  
19 under section 251 of the Act and subject to the TELRIC pricing requirements that  
20 accompany those obligations. We are aware of no FCC or Commission order that finds  
21 that transiting is not a section 251 obligation. Notably, transiting functionality is  
22 something BellSouth regularly offers in Attachment 3 of its interconnection agreements,

1 which sets forth the terms and conditions of BellSouth's obligations to interconnect with  
2 CLECs pursuant to section 251(c) of Act.

3 It also is worth noting that this issue has been addressed by the North Carolina  
4 Commission in response to a Verizon Petition for Declaratory Ruling that Verizon is not  
5 required to provide InterLATA EAS traffic transit between third party carriers (Docket  
6 No. P-19, Sub 454). BellSouth filed a brief in support of Verizon's position. In  
7 consideration of Verizon's Petition, the North Carolina Commission concluded that  
8 Verizon is "obligated to provide the transit service as a matter of law." The Commission  
9 agreed with the arguments set forth by the proponents of the transiting obligation,  
10 specifically that the transiting function follows directly from an ILEC's obligation to  
11 interconnect under 47 U.S.C. §§251(a)(1), 252(c)(2). *[Sponsored by: M. Johnson*  
12 *(KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

13 **Q. BELLSOUTH CLAIMS THAT IN PROVIDING THE TRANSIT TRAFFIC**  
14 **FUNCTION, IT INCURS COSTS BEYOND THOSE THAT THE TELRIC-RATES**  
15 **RECOVERS, SUCH AS COST OF SENDING RECORDS TO CLECS**  
16 **IDENTIFYING THE ORIGINATING CARRIER. PLEASE RESPOND. [BLAKE**  
17 **AT 35:15-22]**

18 **A.** BellSouth has provided this function as part of its interconnection agreements for nearly  
19 8 years and has not claimed to us, prior to this negotiation/arbitration, that the elemental  
20 rates for tandem switching and common transport do not adequately provide for  
21 BellSouth's cost recovery. As is typically the case with new interconnection costs, if  
22 BellSouth now believes the current rates no longer provide for adequate cost recovery,  
23 BellSouth should conduct a TELRIC cost study and propose a rate in the Commission's



1 next generic pricing proceeding. BellSouth, however, should not be permitted  
2 unilaterally to impose a new charge without submitting such charge to the Commission  
3 for review and approval. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J.*  
4 *Falvey (XSP)]*

5 **Q. BELLSOUTH ARGUES THAT CLECS HAVE THE OPTION TO CONNECT**  
6 **DIRECTLY WITH OTHER CARRIERS AND DO NOT NEED TO USE**  
7 **BELLSOUTH TO PROVIDE A TRANSIT FUNCTION. PLEASE RESPOND.**  
8 **[BLAKE AT 35:6-8]**

9 **A.** While Joint Petitioners could theoretically directly interconnect with every carrier in the  
10 state, it is not practical to expect them to do so. The more practical alternative is for Joint  
11 Petitioners to use BellSouth's transiting function as they have always done. As BellSouth  
12 itself states, CLECs use BellSouth transiting because it is more economical and efficient  
13 than direct trunking. *See Blake at 35:8-10.* Different CLECs have different network  
14 configurations and needs, and, therefore may choose to connect directly with other  
15 carriers or utilize BellSouth's transiting function. Regardless of a CLEC's choice,  
16 BellSouth should make its transiting function available to all CLECs on a non-  
17 discriminatory basis at TELRIC-based rates. *[Sponsored by: M. Johnson (KMC), J.*  
18 *Willis (NVX/NSC), J. Falvey (XSP)]*

19 **Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO**  
20 **CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

21 **A.** No. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

<i>Item No. 66, Issue No. 3-7 [Section 10.1]: This issue has been resolved.</i>
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1 **Item No. 67, Issue No. 3-8 [Section 10.2, 10.2.1, 10.3]: This**  
2 **issue has been resolved.**

3 **Item No. 68, Issue No. 3-9 [Section 2.1.12]: This issue has**  
4 **been resolved.**

5 **Item No. 69, Issue No. 3-10 [Section 3.2, Ex. A]: This issue,**  
6 **in both subparts, has been resolved.**

7 **Item No. 70, Issue No. 3-11 [Sections 3.3.1, 3.3.2, 3.4.5,**  
8 **10.10.2]: This issue has been resolved.**

9 **Item No. 71, Issue No. 3-12 [Section 4.5]: This issue has**  
10 **been resolved.**

11 **Item No. 72, Issue No. 3-13 [Section 4.6]: This issue has**  
12 **been resolved.**

13 **Item No. 73, Issue No. 3-14 [Sections 10.10.4, 10.10.5,**  
14 **10.10.6, 10.10.7]: This issue has been resolved.**

#### **COLLOCATION (ATTACHMENT 4)**

**Item No. 74, Issue No. 4-1 [Section 3.9]: This issue has**  
**been resolved.**

**Item No. 75, Issue No. 4-2 [Sections 5.21.1, 5.21.2]: This**  
**issue has been resolved.**

**Item No. 76, Issue No. 4-3 [Section 8.1]: This issue has**  
**been resolved.**

**Item No. 77, Issue No. 4-4 [Section 8.4]: This issue has**  
**been resolved.**

**Item No. 78, Issue No. 4-5 [Section 8.6]: This issue has**  
**been resolved.**

**Item No. 79, Issue No. 4-6 [Sections 8.11, 8.11.1, 8.12.2]:**  
**This issue has been resolved.**

**Item No. 80, Issue No. 4-7 [Section 9.1.1]: This issue has**  
**been resolved.**

1 **Item No. 81, Issue No. 4-8 [Sections 9.1.2, 9.1.3]: This issue**  
2 **has been resolved.**

3 **Item No. 82, Issue No. 4-9 [Sections 9.3]: This issue has**  
4 **been resolved.**

5 **Item No. 83, Issue No. 4-10 [Sections 13.6]: This issue has**  
6 **been resolved.**

7 **ORDERING (ATTACHMENT 6)**

8 **Item No. 84, Issue No. 6-1 [Section 2.5.1]: This issue has**  
9 **been resolved.**

10 **Item No. 85, Issue No. 6-2 [Section 2.5.5]: This issue has**  
11 **been resolved.**

12 **Item No. 86, Issue No. 6-3 [Sections 2.5.6.2, 2.5.6.3] (A)**  
13 **This issue has been resolved. (B) How should disputes over**  
14 **alleged unauthorized access to CSR information be handled**  
15 **under the Agreement?**

16 **Q. WHAT IS YOUR POSITION WITH RESPECT TO ITEM 86(B)/ISSUE 6-3(B)?**

17 **A. ~~If one Party disputes the other Party's assertion of non-compliance, that Party should~~**  
**~~notify the other Party in writing of the basis for its assertion of compliance. If the~~**  
**~~receiving Party fails to provide the other Party with notice that appropriate corrective~~**  
**~~measures have been taken within a reasonable time or provide the other Party with proof~~**  
**~~sufficient to persuade the other Party that it erred in asserting the non-compliance, the~~**  
**~~requesting Party should proceed pursuant to the Dispute Resolution provisions set forth in~~**  
**~~the General Terms and Conditions and the Parties should cooperatively seek expedited~~**  
**~~resolution of the dispute. "Self help", in the form of suspension of access to ordering~~**  
**~~systems and discontinuance of service, is inappropriate and coercive. Moreover, it~~**

effectively ~~denies one Party the due process contemplated by Dispute Resolution provisions incorporated in the General Terms and Conditions of the Agreement.~~

*[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

**Q. DID ANYTHING MR. FERGUSON HAD TO SAY ON THIS ISSUE CAUSE YOU TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?**

A. No. ~~In particular, Mr. Ferguson cannot through testimony cure deficiencies in~~

~~BellSouth's proposed language (the fact that BellSouth fails to clarify its language is~~

~~disturbing).~~ However, Joint Petitioners believe that the differences between the parties

have narrowed significantly, and we are hopeful that a negotiated resolution of this issue

can be reached in the near future.<sup>11</sup> ~~Joint Petitioners remain concerned that the~~

~~timeframes associated with the remedies set forth in BellSouth's proposal are~~

~~unreasonably short and that it remains unclear as to whether and in what instances~~

~~BellSouth would seek to engage in "self help" in the form of suspension of access to~~

~~ordering systems and discontinuance of service. As stated previously, BellSouth's~~

~~insistence on having the ability to unilaterally resolve disputes by engaging in self help is~~

~~inappropriate and coercive~~ *[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC),*

*J. Falvey (XSP)]*

*Item No. 87, Issue No. 6-4 [Section 2.6]: This issue has been resolved.*

<sup>11</sup> Joint Petitioners are awaiting a response from BellSouth on an offer to settle this issue.

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*Item No. 88, Issue No. 6-5 [Section 2.6.5]: What rate should apply for Service Date Advancement (a/k/a service expedites)?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 88/ISSUE 6-5.

A. Rates for Service Date Advancement (a/k/a service expedites) related to UNEs, interconnection or collocation should be set consistent with TELRIC pricing principles.

*[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE EXPLAIN WHY SERVICE DATE ADVANCEMENTS SHOULD BE PRICED AT TELRIC-COMPLIANT RATES.

A. Unbundled Network Elements must be provisioned at TELRIC-compliant rates. BellSouth does not dispute this fact. See Blake at 38:9-11. An expedite order for a UNE should not be treated any differently. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

Q. PLEASE ADDRESS BELL SOUTH'S ASSERTION THAT BECAUSE OFFERING EXPEDITES IS NOT A 251 OBLIGATION, TELRIC RATES SHOULD NOT APPLY. [BLAKE AT 38:16-17]

A. First, it is important to make clear that this issue is not about whether BellSouth will offer expedites in this Agreement. It already has agreed to do so. There is no dispute over the language – it is merely a dispute over the appropriate rate. Second, TELRIC-based rates, by definition, include a reasonable profit. As explained in our direct testimony, the rates proposed by BellSouth are unreasonable, excessive and harmful to competition and consumers. *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

1    **Q.    WHY IS THIS ISSUE APPROPRIATE FOR A SECTION 251 ARBITRATION?**

2    **A.**    As explained in our direct testimony, the manner in which BellSouth provisions UNEs is  
3    absolutely within the parameters of section 251. Moreover, the Parties already have  
4    negotiated and agreed to language providing for expedites. BellSouth cannot now argue  
5    that rates for that service cannot be arbitrated. *[Sponsored by: M. Johnson (KMC), J.*  
6    *Willis (NVX/NSC), J. Falvey (XSP)]*

7    **Q.    BELLSOUTH STATES THAT “ANY REQUIREMENT THAT FORCES**  
8    **BELLSOUTH TO PRICE VOLUNTARILY-OFFERED SERVICES AT TELRIC**  
9    **PRICES WILL CHILL BELLSOUTH’S WILLINGNESS TO VOLUNTARILY**  
10    **OFFER SUCH SERVICES TO CLECS.” [BLAKE AT 39:2-5]. PLEASE**  
11    **RESPOND.**

12    **A.**    BellSouth must provide services to CLECs at parity with how BellSouth treats its own  
13    retail operation. Therefore, if BellSouth chooses to no longer voluntarily offer expedites  
14    to CLECs, then BellSouth can no longer provide expedites for its own retail operation.  
15    Because BellSouth does indeed provide expedites to its retail operation it has a section  
16    251 obligation to provide the same access to us – at TELRIC-compliant rates. We don’t  
17    pay retail for loops and we shouldn’t pay retail for expediting them. The reason why is  
18    because section 251 requires that these things be made available at TELRIC compliant  
19    rates (which retail customers are not entitled to). We are not BellSouth’s retail customers  
20    and this Commission should reject BellSouth’s attempt to replace its statutory obligations  
21    (and kill competition) with tariffed service offerings that retail customers can buy.  
22    *[Sponsored by: M. Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]*

1 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
2 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

3 A. No. However, the Joint Petitioners remain optimistic that BellSouth will take them up on  
4 their offer to negotiate a reasonable rate for service expedites. [Sponsored by: M.  
5 Johnson (KMC), J. Willis (NVX/NSC), J. Falvey (XSP)]

6 *Item No. 89, Issue No. 6-6 [Section 2.6.25]: This issue has  
been resolved.*

7 *Item No. 90, Issue No. 6-7 [Section 2.6.26]: This issue has  
been resolved.*

8 *Item No. 91, Issue No. 6-8 [Section 2.7.10.4]: This issue  
has been resolved.*

9 *Item No. 92, Issue No. 6-9 [Section 2.9.1]: This issue has  
been resolved.*

10 *Item No. 93, Issue No. 6-10 [Section 3.1.1]: This issue has  
been resolved.*

11 *Item No. 94, Issue No. 6-11 [Sections 3.1.2, 3.1.2.1]: This  
issue has been resolved.*

12 **BILLING (ATTACHMENT 7)**

13 *Item No. 95, Issue No. 7-1 [Section 1.1.3]: This issue has  
been resolved.*

14 *Item No. 96, Issue No. 7-2 [Section 1.2.2]: This issue has  
been resolved.*

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3 **Item No. 97, Issue No. 7-3 [Section 1.4]: When should**  
4 **payment of charges for service be due?**

5  
6  
7 **Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 97/ISSUE 7-3.**

8  
9 **A.** ~~Payment of charges for services rendered should be due thirty (30) calendar days from~~  
10 ~~receipt or website posting of a complete and fully readable bill or within thirty (30)~~  
11 ~~calendar days from receipt or website posting of a corrected or retransmitted bill, in those~~  
12 ~~cases where correction or retransmission is necessary for processing. [Sponsored by: M.~~  
13 ~~Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

14  
15 **Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE WITH REGARD TO**  
16 **PAYMENT DUE DATE IS APPROPRIATE?**

17 **A.** ~~Joint Petitioners' language is appropriate given that the Petitioners agreed to BellSouth's~~  
18 ~~proposal for a 30-day payment deadline (one billing cycle). We had initially sought 45~~  
19 ~~days. Under this tight deadline it is imperative that CLECs be given the full 30 days to~~  
20 ~~review and pay those bills. As Joint Petitioners demonstrated in their direct testimony,~~  
21 ~~Petitioners typically have far less than 30 days to pay invoices due to a long lag time that~~  
22 ~~is experienced between BellSouth's "bill date" and the date on which Joint Petitioners~~  
23 ~~actually receive bills. Accordingly, the Petitioners' language provides that the Petitioners~~  
24 ~~will be given 30-days to pay once a Petitioner receives a complete and fully readable bill~~  
25 ~~via mail or website posting. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC),~~  
26 ~~J. Falvey (XSP)]~~



1 Q. PLEASE RESPOND TO BELL SOUTH'S SYSTEMS ARGUMENTS WHY IT  
2 CANNOT ALLOW THE JOINT PETITIONERS 30 DAYS UPON RECEIPT TO  
3 PAY A BILL. [BLAKE AT 39:17-23]

4 A. ~~The Joint Petitioners should not be subject to unfair payment terms based on BellSouth's~~  
5 ~~alleged systems limitations. Joint Petitioners should not have to endure inconsistent and~~  
6 ~~unfair payment terms because BellSouth might have to modify its systems to allow~~  
7 ~~CLECs adequate time to pay invoices. It is unreasonable for BellSouth to assert that its~~  
8 ~~systems cannot be modified and improved, or that it won't modify or improve them.~~

9 As stated in the Joint Petitioners direct testimony, NuVox, on behalf of its NewSouth  
10 operating entity, tracked the average time for BellSouth to deliver electronic invoices. It  
11 has been NewSouth's experience that once it receives a bill from BellSouth, NewSouth  
12 only has between 19-22 days to process the bill for payment. See Joint Petitioners at 82.  
13 Moreover, it takes on average 6.45 days for Xspedius to receive bills from BellSouth.  
14 See Joint Petitioners at 82. ~~These timeframes are far from commercially reasonable and~~  
15 ~~BellSouth should not be able to get away with its standard our-current-systems don't~~  
16 ~~allow it so it cannot be done argument. Joint Petitioners' request is reasonable and~~  
17 ~~BellSouth should not be able to hide behind its convenient systems limitations arguments~~  
18 ~~to avoid agreement on reasonable and fair payment terms. [Sponsored by: M. Johnson~~  
19 ~~(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

20 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
21 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

22 A. ~~No. The Commission should allow 30 days from posting or receipt of a bill to remit~~  
23 ~~payment. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

Item No. 98, Issue No. 7-4 [Section 1.6]: *This issue has been resolved.*

Item No. 99, Issue No. 7-5 [Section 1.7.1]: *This issue has been resolved.*

Item No. 100, Issue No. 7-6 [Section 1.7.2]: *Should CLEC be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination?*

Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 100/ISSUE 7-6.

A. ~~CLECs should not be required to calculate and pay past due amounts in addition to those specified in BellSouth's notice of suspension or termination for nonpayment in order to avoid suspension or termination. Rather, if a Petitioner receives a notice of suspension or termination from BellSouth, with a limited time to pay non-disputed past due amounts, Petitioner should be required to pay only those amounts past due as of the date of the notice and as expressly and plainly indicated on the notice, in order to avoid suspension or termination. Otherwise, CLEC will risk suspension or termination due to possible calculation and timing errors. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE IS APPROPRIATE.

A. ~~Joint Petitioners' language is appropriate because there is a substantial risk of calculation errors or disputes and customer impacting service outages inherent in BellSouth's proposal. Payment and dispute posting are all exclusively under BellSouth's control. The Joint Petitioners, however, could do their very best to calculate the precise amount that will become past due as of the pending suspension or termination action, but any such calculation would necessarily have to include a prediction about how timely and~~

1 accurately BellSouth will post payments and disputes (which can be legitimately  
2 withheld). Thus, BellSouth's proposal is tantamount to a shell game that could easily be  
3 rigged or abused by BellSouth. Too much is on the line for Joint Petitioners (and our  
4 customers) to be subject to such uncertainty. Joint Petitioners — and our customers —  
5 could be shut down based on a simple calculation error, a bad prediction about BellSouth  
6 posting performance, or by bad actions on the part of BellSouth. Suspension and  
7 termination of access to ordering systems and services are very serious events with very  
8 significant impacts that stretch well beyond the Parties. When such actions may be taken  
9 should not be determined by a shell game exclusively in control of a Party who likely  
10 would not mind if it put one or all of the Joint Petitioners out of business. [Sponsored by:  
11 M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

12 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
13 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

14 A. No. Even BellSouth's revised proposal does not eliminate the guess work involved [see  
15 BLAKE at 41:24-43:4], as it calls for a manual help request for additional information on  
16 what could be hundreds of bills coming past due (each month, the Joint Petitioners  
17 receive thousands of bills from BellSouth — NuVox alone receives over 1100). If  
18 BellSouth wants to threaten suspension or termination for non-payment of invoices for  
19 services rendered, it must be able to put the precise amount that must be paid on the  
20 notice it sends implicating these potentially fatal remedies. Too much is at risk to leave it  
21 up to a manual request process with no documentation requirements or response times  
22 assured. The cure amount should be stated in dollars and cents on the face of any  
23 suspension or termination notice. This issue is too important to leave to subsequent

1 ~~requests and miscommunications or non-responses that could result therefrom~~ With  
2 ~~remedies as potentially devastating as suspension and termination margins for error need~~  
3 ~~to be eliminated~~ BellSouth's proposed acceleration and consolidation of past due  
4 amounts across potentially hundreds of bills (regionally, NuVox alone receives over  
5 1,100 invoices from BellSouth every month from BellSouth) simply leaves too much  
6 room for error and it fails to give proper notice on the accounts (all others) it seeks to  
7 consolidate into a single notice. Thus, the revised language proposed by BellSouth still  
8 preserves for BellSouth the ability to coerce and game while the holding over the heads  
9 of the Joint Petitioners remedies that could destroy their businesses and those of all of the  
10 South Carolina customers we serve. Because our businesses and the businesses of the  
11 customers we serve are on the line the Commission should have zero tolerance for guess  
12 work and should instead require that the amount due be set forth on each notice. This  
13 process whereby one notice triggers calculations or requests for calculations across  
14 hundreds upon hundreds of bills is improper and is simply too risky to be acceptable.  
15 There are other ways to ensure payment that do not threaten to have such a destructive  
16 impact on the businesses of the Joint Petitioners and the South Carolina businesses they  
17 serve.

18  
19 *Item No. 101, Issue No. 7-7 [Section 1.8.3]: How many*  
20 *months of billing should be used to determine the maximum*  
21 *amount of the deposit?*

22 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 101/ISSUE 7-7.

23 A. ~~The maximum amount of a deposit should not exceed two month's estimated billing for~~  
~~new CLECs or one and one half month's actual billing for existing CLECs (based on~~  
~~average monthly billings for the most recent six (6) month period). The one and one-half~~

1 month's actual billing deposit limit for existing CLECs is reasonable given that balances  
2 ~~can be predicted with reasonable accuracy and that significant portions of services are~~  
3 ~~billed in advance~~. Alternatively, Joint Petitioners are willing to accept a one month  
4 maximum for services billed in advance and two month maximum for services billed in  
5 arrears. BellSouth recently agreed to this alternative set of maximum amounts with  
6 ITC^DeltaCom. (The relevant excerpt from the BellSouth/ITC^DeltaCom Agreement is  
7 attached to our Direct Testimony as Exhibit C.) *[Sponsored by: M. Johnson (KMC), H.*  
8 *Russell (NVX/NSC), J. Falvey (XSP)]*

9 Q. PLEASE EXPLAIN WHY IS PETITIONERS' LANGUAGE IS APPROPRIATE.

10 A. The Petitioners' language strikes a reasonable balance whereby BellSouth's risk  
11 exposure is covered by a security deposit and existing CLECs such as Petitioners are not  
12 required to tie up substantial capital in deposits. As stated in our initial testimony,  
13 Petitioners maintain that deposit terms should reflect that each Petitioner, directly and  
14 through its predecessors, has already had a long and substantial business relationship with  
15 BellSouth. Notably, our alternative proposal, which is the maximum deposit provision  
16 BellSouth has already agreed to regionally with ITC^DeltaCom, also reflects a  
17 reasonable compromise, as it reflects that BellSouth bills in advance for UNEs and other  
18 non-usage based elements and therefore under its current proposal to Joint Petitioners  
19 would be essentially double securing itself with respect to those services. *[Sponsored by:*  
20 *M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]*

1 Q. BELLSOUTH CLAIMS THAT A MAXIMUM DEPOSIT BASED ON TWO  
2 MONTHS BILLING IS CONSISTENT WITH STANDARD PRACTICE IN THE  
3 TELECOMMUNICATIONS INDUSTRY. PLEASE RESPOND. [BLAKE AT  
4 43:13-14]

5 A. ~~Whether or not a two month maximum is standard BellSouth practice (and it evidently is~~  
6 ~~not in some states and with respect to certain CLECs), we do not agree that it is~~  
7 ~~appropriate or justified. In almost any other contracting scenario where one party is not~~  
8 ~~attempting to leverage their monopoly legacy and overwhelming market dominance, it~~  
9 ~~would not be standard practice for one side (BellSouth) to continually try to extract~~  
10 ~~deposits from the other.~~ Moreover, BellSouth has agreed to lesser maximums with at  
11 least one other CLEC (See ITC^DeltaCom Georgia Interconnection Agreement).

12 ~~There is no reason why any of the Joint Petitioners should be subject to a higher~~  
13 ~~maximum deposit.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.  
14 Falvey (XSP)]

16 Q. BELLSOUTH ASSERTS THAT JOINT PETITIONERS HAVE "ESTABLISHED  
17 POLICIES" REGARDING DEPOSIT AMOUNTS BECAUSE JOINT  
18 PETITIONERS' TARIFFS SPECIFY THAT DEPOSITS MAY BE REQUIRED IN  
19 AN AMOUNT NOT TO EXCEED TWO MONTHS ESTIMATED BILLING.  
20 [BLAKE AT 43:18-25]. PLEASE RESPOND.

21 A. It is true that NuVox's and KMC's tariffs set forth a two month maximum deposit when a  
22 deposit is required. Two month deposit terms usually come with an automatic refund  
23 upon 12 months of good payment – BellSouth is not prepared to offer that here.

1 Nevertheless, ~~Joint Petitioners' tariff terms have little to do with the substance~~ of this  
2 arbitration proceeding. ~~BellSouth ignores the fact that most—if not all—services~~  
3 ~~provided by Joint Petitioners are done so through custom contracts, a fact that Joint~~  
4 ~~Petitioners have made known throughout the concurrent arbitration proceedings~~  
5 ~~underway in eight other states.~~ Given the commercial nature of the customer contracts  
6 and the fact that Joint Petitioners are competing with each other, BellSouth, and hundreds  
7 of other CLECs, Joint Petitioners often must reduce or waive deposits in order to win  
8 business. The strict terms of Joint Petitioners tariffs are not always found within their  
9 custom contracts. ~~Finally, Joint Petitioners are not retail customers. BellSouth's~~  
10 ~~comparison is inapposite.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.  
11 Falvey (XSP)]

12 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
13 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

14 A. No. ~~BellSouth's two month maximum deposit proposal is unreasonable in this context,~~  
15 ~~blatantly discriminatory and is more than could possibly be justified.~~ [Sponsored by: M.  
16 Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

*Item No. 102, Issue No. 7-8 [Section 1.8.3.1]: Should the amount of the deposit BellSouth requires from CLEC be reduced by past due amounts owed by BellSouth to CLEC?*

17  
18 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 102/ISSUE 7-8.

19 A. ~~The amount of security due from an existing CLEC should be reduced by amounts due to~~  
20 ~~CLEC by BellSouth aged over thirty (30) calendar days. BellSouth may request~~  
21 ~~additional security in an amount equal to such reduction once BellSouth demonstrates a~~  
22 ~~good payment history, as defined in the deposit provisions of Attachment 7 of the~~

1 ~~Agreement. This provision is appropriate given that the Agreement's deposit provisions~~  
2 ~~are not reciprocal and that BellSouth's payment history with CLECs is often poor.~~  
3 ~~[Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

4 Q. PLEASE EXPLAIN WHY THE PETITIONERS' LANGUAGE IS  
5 APPROPRIATE.

6 A. ~~Joint Petitioners language is appropriate because it is fair and reasonable. Joint~~  
7 ~~Petitioners have had to endure a legacy of untimely payments and large receivables from~~  
8 ~~BellSouth. For example, KMC recently conducted a study wherein it found that~~  
9 ~~BellSouth paid late 91% of the time (a fact that suggests that BellSouth could use more~~  
10 ~~time to pay its bills and that BellSouth should be endorsing the Joint Petitioners' position~~  
11 ~~and language proposal for Issue 97). A copy of KMC's analysis is appended hereto as~~  
12 ~~Exhibit D. Also, by way of example, BellSouth wrongly withheld amounts of~~  
13 ~~approximately \$25 million to e.spire, a company whose assets Xspedius substantially~~  
14 ~~acquired. More recently, BellSouth has had its receivables run into the millions with~~  
15 ~~Xspedius. There are no deposit provisions in this Agreement to protect Joint Petitioners~~  
16 ~~from the credit risks created by BellSouth's chronically poor payment history. Any credit~~  
17 ~~risk exposure that BellSouth seeks to protect itself from Joint Petitioners is certainly~~  
18 ~~offset by amounts that BellSouth does not pay timely to Joint Petitioners. [Sponsored by:~~  
19 ~~M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~



1 Q. DOES MS. BLAKE PROVIDE ANY JUSTIFICATION FOR BELL SOUTH'S  
2 REFUSAL TO AGREE TO JOINT PETITIONERS' PROPOSAL? [BLAKE AT  
3 44:8-45:7]

4 A. No. ~~Ms. Blake provides no justification for BellSouth's refusal to offset deposit requests~~  
5 ~~with amounts past due from BellSouth to Joint Petitioners. Instead, Ms. Blake suggests~~  
6 ~~that suspension/termination of service and assessment of late payment charges are~~  
7 ~~sufficient to protect Joint Petitioners' credit risk created by BellSouth's poor payment~~  
8 ~~track record. Ms. Blake does not explain why these same mechanisms are not sufficient~~  
9 ~~to protect BellSouth. If BellSouth was willing to rely exclusively on those mechanisms,~~  
10 ~~we would as well. However, BellSouth insists upon collecting deposits. Accordingly,~~  
11 ~~we have every right to insist that the deposit requirements incorporated into the~~  
12 ~~Agreement reflect the fact that BellSouth's risk exposure is reduced by amounts that it~~  
13 ~~withholds from Joint Petitioners. [Sponsored by: M. Johnson (KMC), H. Russell~~  
14 ~~(NVX/NSC), J. Falvey (XSP)]~~

15 Q. DID ANYTHING MS. BLAKE HAVE TO SAY ON THIS ISSUE CAUSE YOU TO  
16 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

17 A. ~~No.~~ However, the Petitioners recognize BellSouth's proposal that it is willing to reduce a  
18 deposit amount by amounts BellSouth owes Petitioners pursuant to Attachment 3. See  
19 Blake at 44:20-24. Nevertheless, the ~~Petitioners do not want to limit their right to reduce~~  
20 ~~security deposits to only BellSouth's undisputed past due payments. There is no rational~~  
21 ~~basis for such a limitation, as BellSouth retains amounts that it disputes and, as such the~~  
22 ~~Joint Petitioners' risk remains the same regardless of whether BellSouth disputes~~  
23 ~~amounts. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

*Item No. 103, Issue No. 7-9 [Section 1.8.6]: Should BellSouth be entitled to terminate service to CLEC pursuant to the process for termination due to non-payment if CLEC refuses to remit any deposit required by BellSouth within 30 calendar days?*

1  
2 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 103/ISSUE 7-9.

3 A. ~~BellSouth should have a right to terminate services to CLEC for failure to remit a deposit~~  
4 ~~requested by BellSouth only in cases where:~~ (a) CLEC agrees that such a deposit is  
5 ~~required by the Agreement, or (b) the Commission has ordered payment of such deposit.~~  
6 ~~A dispute over a requested deposit should be addressed via the Agreement's Dispute~~  
7 ~~Resolution provisions and not through "self-help". [Sponsored by: M. Johnson (KMC),~~  
8 ~~H. Russell (NVX/NSC), J. Falvey (XSP)]~~

9 Q. PLEASE EXPLAIN WHY JOINT PETITIONERS' LANGUAGE IS  
10 APPROPRIATE.

11 A. Joint Petitioners' proposal allows BellSouth to terminate service to CLECs for failure to  
12 remit a deposit amount that has been agreed to or ordered. ~~It does not, however, allow~~  
13 ~~BellSouth to engage in self-help in those circumstances where the Parties do not agree on~~  
14 ~~the amount of deposit required (if any). In those circumstances, BellSouth's proper line~~  
15 ~~of recourse is to the Dispute Resolution provisions of the Agreement. In short, the~~  
16 ~~Commission should decide and resolve the dispute not BellSouth. This language is~~  
17 ~~reasonable and more equitable than BellSouth's proposal, which would allow BellSouth~~  
18 ~~to terminate service to CLEC under any circumstance in which CLEC has not remitted a~~  
19 ~~deposit requested by BellSouth within thirty (30) calendar days. Joint Petitioners'~~  
20 ~~proposal prohibits BellSouth from engaging in unacceptable self-help actions where~~  
21 ~~BellSouth seeks to disregard the Dispute Resolution provisions of the Agreement (and~~

likely the deposit criteria) and instead ~~leverage its monopoly legacy by pulling the plug on a Joint Petitioner and all of its customers.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

Q. MR. FERGUSON ASSERTS THAT "THIRTY CALENDAR DAYS IS A REASONABLE TIME PERIOD WITHIN WHICH A CLEC SHOULD MEET ITS FISCAL RESPONSIBILITIES". PLEASE RESPOND. [FERGUSON AT 7:7-9]

A. ~~Mr. Ferguson's statement does not address the issue. As stated in the Petitioners' proposal, if a Joint Petitioner has agreed to a BellSouth deposit request or the Commission has ordered posting of a specified deposit, then BellSouth may terminate service if such deposit is not remitted by the CLEC within 30 days. However, should there be a dispute as to BellSouth's deposit request, then, under no circumstances, should BellSouth be able to "pull-the-plug" if a Joint Petitioner does not cede to BellSouth's demands (however unreasonable) within 30 days. Once again, BellSouth is trying to use its monopoly legacy to engage in self-help, without regard to the dispute resolution provisions included in this Agreement. "Pull the plug" provisions such as this one proposed by BellSouth are an inappropriate means of dispute resolution that unnecessarily threaten to disproportionate harm to Joint Petitioners and their South Carolina customers.~~ [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

1 Q. DID ANYTHING MR. FERGUSON HAD TO SAY ON THIS ISSUE CAUSE YOU  
2 TO CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

3 A. ~~No. The Commission should reject this and every other Machiavellian self-help/pull-the-~~  
4 ~~plug provision proposed by BellSouth.~~ [Sponsored by: M. Johnson (KMC), H. Russell  
5 (NVX/NSC), J. Falvey (XSP)]

6  
7  
8 *Item No. 104, Issue No. 7-10 [Section 1.8.7]: What  
recourse should be available to either Party when the  
Parties are unable to agree on the need for or amount of a  
reasonable deposit?*

9 Q. PLEASE STATE YOUR POSITION WITH RESPECT TO ITEM 104/ISSUE 7-10.

10 A. ~~If the Parties are unable to agree on the need for or amount of a reasonable deposit, either~~  
11 ~~Party should be able to file a petition for resolution of the dispute and both parties should~~  
12 ~~cooperatively seek expedited resolution of such dispute.~~ [Sponsored by: M. Johnson  
(KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]

13 Q. PLEASE EXPLAIN WHY PETITIONERS' LANGUAGE IS APPROPRIATE?

14 A. ~~The Petitioners' language is appropriate as it reasonably defers to the dispute resolution~~  
15 ~~provisions of the Agreement. If BellSouth is aggrieved by a Joint Petitioner's response to~~  
16 ~~a deposit request it should file a complaint with the Commission for dispute resolution.~~  
17 ~~BellSouth's proposal, on the other hand, seeks to force the Petitioners to file a complaint~~  
18 ~~— even though we have no right to seek a deposit, and would not be the aggrieved party if~~  
19 ~~a dispute arose with respect to a deposit request. (The complaint filing burden would~~  
20 ~~shift to us, if a dispute arose as to whether we were entitled to the return of various~~  
21 ~~deposit amounts — our position is not one-sided.) Compounding that over-reaching,~~

1 ~~BellSouth then insists that a Petitioner post a bond while the dispute is pending, and to~~  
2 ~~post a payment bond, which is essentially the same as paying BellSouth the deposit~~  
3 ~~outright. Reasonable and fair dispute resolution provisions do not enable one side to~~  
4 ~~pronounce itself the winner at the outset. Moreover, the dispute resolution provisions~~  
5 ~~agreed to by the parties (notwithstanding their dispute over the availability of courts as a~~  
6 ~~venue) simply do not contemplate bond posting requirements. [Sponsored by: M.~~  
7 ~~Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

8 Q. HAS MS. BLAKE PROVIDED ANY JUSTIFICATION FOR BELL SOUTH'S  
9 POSITION?

10 A. ~~No. Ms. Blake restates BellSouth's position, and essentially complains that in the event~~  
11 ~~of a dispute as to whether BellSouth is entitled to a deposit or a certain level of a deposit~~  
12 ~~under the Agreement, BellSouth should not have to seek and prevail in dispute resolution~~  
13 ~~prior to obtaining the relief it seeks. See Blake at 45:15-46:7. This is likely the case~~  
14 ~~because there simply is no justification for the heavy handed and one sided provision~~  
15 ~~proposed by BellSouth. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J.~~  
16 ~~Falvey (XSP)]~~

17 Q. DID ANYTHING MS. BLAKE HAD TO SAY ON THIS ISSUE CAUSE YOU TO  
18 CHANGE YOUR POSITION OR PROPOSED LANGUAGE?

19 A. ~~No. [Sponsored by: M. Johnson (KMC), H. Russell (NVX/NSC), J. Falvey (XSP)]~~

20 

Item No. 105, Issue No. 7-11 [Section 1.8.9]: This issue has  
been resolved.

21 

Item No. 106, Issue No. 7-12 [Section 1.9.1]: This issue has  
been resolved.

1                    **BONA FIDE REQUEST/NEW BUSINESS REQUEST (BFR/NBR)**

2                                    **(ATTACHMENT 11)**

*Item No. 107, Issue No. 11-1 [Sections 1.5, 1.8.1, 1.9, 1.10]:  
This issue has been resolved.*

3  
4                                    **SUPPLEMENTAL ISSUES**

5                                    **(ATTACHMENT 2)**

*Item No. 108, Issue No. S-1: How should the final FCC  
unbundling rules be incorporated into the Agreement?*

6  
7                    Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the  
8                    Commission refer this issue to the generic change-of-law docket for initial resolution and  
9                    the reincorporation back into this docket for appropriate incorporation into the arbitrated  
10                  interconnection agreements. If the Commission declines to grant such motion, or if one  
11                  is not filed, Joint Petitioners reserve the right to supplement this testimony.

12  
13                    *Item No. 109, Issue No. S-2: (A) Should any intervening  
FCC Order adopted in CC Docket 01-338 or WC Docket 04-  
313 be incorporated into the Agreement? (B) Should any  
intervening State Commission order relating to unbundling  
obligations, if any, be incorporated into the Agreement?*

14                  Joint Petitioners and BellSouth agree that issue 109/S-2 is now moot.

15                    *Item No 110, Issue No. S-3: If FCC 04-179 is vacated or  
otherwise modified by a court of competent jurisdiction, how*

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*should such order or decision be incorporated into the Agreement?*

Joint Petitioners and BellSouth agree that issue 110/S-3 is now moot.

*Item No. 111, Issue No. S-4 What post Interim Period<sup>12</sup> transition plan should be incorporated into the Agreement?*

Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the Commission refer this issue to the generic change-of-law docket for initial resolution and the reincorporation back into this docket for appropriate incorporation into the arbitrated interconnection agreements. If the Commission declines to grant such motion, or if one is not filed, Joint Petitioners reserve the right to supplement this testimony.

*Item No. 112, Issue No. S-5: (A) What rates, terms and conditions relating to switching, enterprise market loops and dedicated transport were "frozen" by FCC 04-179? (B) How should these rates, terms and conditions be incorporated into the Agreement?*

Joint Petitioners and BellSouth agree that issue 112/S-5 is now moot.

*Item No. 113, Issue No. S-6: (A) Is BellSouth obligated to provide unbundled access to DSL loops, DS3 loops and dark fiber loops? (B) If so, under what rates, terms and conditions?*

<sup>12</sup> INTERIM PERIOD – as set forth in ¶29 of the FCC 04-179, is defined as the period that ends on the earlier of (1) March 12, 2005 or (2) the effective date of the final unbundling rules adopted by the FCC pursuant to the Notice of Proposed Rulemaking described in the FCC 04-179

1 Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the  
2 Commission refer this issue to the generic change-of-law docket for initial resolution and  
3 the reincorporation back into this docket for appropriate incorporation into the arbitrated  
4 interconnection agreements. If the Commission declines to grant such motion, or if one  
5 is not filed, Joint Petitioners reserve the right to supplement this testimony.

6  
*Item No 114, Issue No. S-7: (A) Is BellSouth obligated to provide unbundled access to DS1 dedicated transport, DS3 dedicated transport and dark fiber transport? (B) If so, under what rates, terms and conditions?*

7  
8 Joint Petitioners and BellSouth have agreed to file a joint motion requesting that the  
9 Commission refer this issue to the generic change-of-law docket for initial resolution and  
10 the reincorporation back into this docket for appropriate incorporation into the arbitrated  
11 interconnection agreements. If the Commission declines to grant such motion, or if one  
12 is not filed, Joint Petitioners reserve the right to supplement this testimony.

13  
*Item No. 115, Issue No. S-8: This issue has been resolved.*

14  
15 **Q. DOES THIS CONCLUDE YOUR REBUTTAL TESTIMONY?**

16 **A.** Yes, for now, it does. Thank you. *[Sponsored by: M. Johnson (KMC), H. Russell*  
17 *(NVX/NSC), J. Willis (NVX/NSC), J. Falvey (XSP)]*



# **Exhibit D**

**BELLSOUTH**  
Invoices Payments  
02/01/04 - 03/13/05

5/23/2005 1:24 PM

Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
February-04	02/01/04	Bell South	\$0.00	\$1,387.70	\$3,044.06	\$3,044.06	04/08/04	03/01/04	37	0.00059	\$ 66.45
February-04	02/01/04	Bell South	\$0.00	\$12,961.39	\$109,730.23	\$109,730.23	04/08/04	03/01/04	37	0.0005	\$ 2,030.01
February-04	02/01/04	Bell South	\$0.00	\$4,355.47	\$966.52	\$657.97	04/08/04	03/01/04	37	0.0003333	\$ 8.11
February-04	02/01/04	Bell South	\$0.00	\$12,394.99	\$44,705.24	\$44,705.24	04/08/04	03/01/04	37	0.0004536	\$ 750.30
February-04	02/01/04	Bell South	\$0.00	\$24,951.83	\$111,142.83	\$111,142.83	04/08/04	03/01/04	37	0.0004536	\$ 1,865.33
February-04	02/01/04	Bell South	\$0.00	\$32,459.08	\$77,207.82	\$77,207.82	04/08/04	03/01/04	37	0.0004536	\$ 1,295.79
February-04	02/01/04	Bell South	\$0.00	\$12,671.10	\$35,644.70	\$35,644.70	04/08/04	03/01/04	37	0.0005224	\$ 688.97
February-04	02/01/04	Bell South	\$0.00	\$11,767.41	\$52,584.32	\$52,584.32	04/08/04	03/01/04	37	0.0004536	\$ 882.53
February-04	02/09/04	Bell South	\$0.00	\$25.08	\$161.89	\$161.89	04/08/04	03/09/04	29	0.0003333	\$ 1.56
February-04	02/12/04	Bell South	\$0.00	\$3,742.56	\$36,321.82	\$36,321.82	04/08/04	03/12/04	26	0.00059	\$ 557.18
February-04	02/12/04	Bell South	\$0.00	\$6,893.69	\$30,530.83	\$30,530.83	04/08/04	03/12/04	26	0.0003333	\$ 264.57
February-04	02/12/04	Bell South	\$0.00	\$3,088.25	\$22,393.99	\$22,393.99	04/08/04	03/12/04	26	0.0004536	\$ 264.11
February-04	02/12/04	Bell South	\$0.00	\$1,382.66	\$18,867.91	\$18,867.91	04/08/04	03/12/04	26	0.0004536	\$ 222.52
February-04	02/12/04	Bell South	\$0.00	\$485.18	\$2,268.28	\$2,268.28	04/08/04	03/12/04	26	0.0004536	\$ 26.75
February-04	02/12/04	Bell South	\$0.00	\$618.39	\$27,921.42	\$27,921.42	04/08/04	03/12/04	26	0.0005224	\$ 379.24
February-04	02/12/04	Bell South	\$0.00	\$276.70	\$3,788.89	\$3,788.89	04/08/04	03/12/04	26	0.0005	\$ 49.26
February-04	02/12/04	Bell South	\$0.00	\$2,085.79	\$26,177.46	\$26,177.46	04/08/04	03/12/04	26	0.0004536	\$ 308.73
February-04	02/13/04	Bell South	\$0.00	\$0.00	\$0.32	\$0.32	04/08/04	03/12/04	26	0.0005	\$ 0.00
February-04	02/13/04	Bell South	\$0.00	\$48.80	\$0.50	\$0.50	04/08/04	03/12/04	26	0.0004536	\$ 0.01
February-04	02/13/04	Bell South	\$0.00	\$0.09	\$0.70	\$0.79	04/08/04	03/12/04	26	0.0004536	\$ 0.01
<b>February-04 Total</b>			\$0.00	\$131,596.16	\$603,459.73	\$603,151.27					\$ 9,661.44
March-04	03/01/04	Bell South	(\$321.71)	\$1,365.07	\$3,490.59	\$3,168.88	05/18/04	04/01/04	47	0.00059	\$ 87.87
March-04	03/01/04	Bell South	\$0.00	\$13,816.64	\$113,429.02	\$113,429.02	05/18/04	04/01/04	47	0.0005	\$ 2,665.58
March-04	03/01/04	Bell South	\$0.00	\$4,151.27	\$1,287.81	\$1,287.81	05/18/04	04/01/04	47	0.0003333	\$ 20.17
March-04	03/01/04	Bell South	\$0.00	\$12,350.74	\$43,996.97	\$38,187.95	05/18/04	04/01/04	47	0.0004536	\$ 814.14
March-04	03/01/04	Bell South	\$0.00	\$25,199.59	\$115,517.89	\$103,212.95	05/18/04	04/01/04	47	0.0004536	\$ 2,200.42
March-04	03/01/04	Bell South	\$0.00	\$31,870.41	\$80,823.94	\$45,658.73	05/18/04	04/01/04	47	0.0004536	\$ 973.41
March-04	03/01/04	Bell South	\$0.00	\$12,493.77	\$36,491.76	\$34,115.28	05/18/04	04/01/04	47	0.0005224	\$ 837.63
March-04	03/01/04	Bell South	\$0.00	\$11,890.42	\$55,626.76	\$52,115.33	05/18/04	04/01/04	47	0.0004536	\$ 1,111.06
March-04	03/09/04	Bell South	\$0.00	\$21.53	\$0.00			04/09/04		0.00059	
March-04	03/09/04	Bell South	\$0.00	\$98.69	\$0.00			04/09/04		0.0005	
March-04	03/09/04	Bell South	\$0.00	\$24.58	\$147.96	\$147.96	05/18/04	04/09/04	39	0.0003333	\$ 1.92
March-04	03/09/04	Bell South	\$0.00	\$19.66	\$0.00			04/09/04		0.0004536	
March-04	03/09/04	Bell South	\$0.00	\$173.58	\$0.00			04/09/04		0.0004536	
March-04	03/09/04	Bell South	\$0.00	\$20.24	\$0.00			04/09/04		0.0004536	
March-04	03/09/04	Bell South	\$0.00	\$1.24	\$0.00			04/09/04		0.0004536	
March-04	03/12/04	Bell South	\$0.00	\$3,688.82	\$35,385.82	\$32,099.68	05/18/04	04/12/04	36	0.00059	\$ 681.80
March-04	03/12/04	Bell South	\$0.00	\$6,888.32	\$26,640.54	\$26,550.49	05/18/04	04/12/04	36	0.0003333	\$ 318.57
March-04	03/12/04	Bell South	\$0.00	\$3,040.91	\$20,150.28	\$17,476.53	05/18/04	04/12/04	36	0.0004536	\$ 285.38
March-04	03/12/04	Bell South	\$0.00	\$1,373.21	\$19,196.84	\$17,130.19	05/18/04	04/12/04	36	0.0004536	\$ 279.73
March-04	03/12/04	Bell South	\$0.00	\$471.43	\$2,357.41	\$1,330.94	05/18/04	04/12/04	36	0.0004536	\$ 21.73
March-04	03/12/04	Bell South	\$0.00	\$681.29	\$26,431.02	\$24,699.35	05/18/04	04/12/04	36	0.0005224	\$ 464.51
March-04	03/12/04	Bell South	\$0.00	\$272.60	\$3,718.65	\$3,718.65	05/18/04	04/12/04	36	0.0005	\$ 66.94
March-04	03/12/04	Bell South	\$0.00	\$2,068.47	\$24,001.96	\$22,475.62	05/18/04	04/12/04	36	0.0004536	\$ 367.02
March-04	03/13/04	Bell South	\$0.00	\$0.05	\$0.31			04/13/04		0.0005	
March-04	03/13/04	Bell South	\$0.00	\$46.40	\$1.02	\$0.88	05/18/04	04/13/04	35	0.0004536	\$ 0.01
March-04	03/13/04	Bell South	\$0.00	\$0.11	\$1.38			04/13/04		0.0004536	
<b>March-04 Total</b>			(\$321.71)	\$131,829.04	\$608,697.93	\$536,806.24					\$ 11,197.89
April-04	04/01/04	Bell South	\$0.00	\$1,512.45	\$3,069.90	\$2,743.19	05/27/04	04/30/04	27	0.00059	\$ 43.70
April-04	04/01/04	Bell South	\$0.00	\$15,032.28	\$101,007.76	\$97,618.96	05/27/04	04/30/04	27	0.0005	\$ 1,317.86
April-04	04/01/04	Bell South	\$0.00	\$4,500.55	\$1,144.90	\$1,100.97	05/27/04	04/30/04	27	0.0003333	\$ 9.91
April-04	04/01/04	Bell South	\$0.00	\$14,104.40	\$43,087.03	\$38,303.51	05/27/04	04/30/04	27	0.0004536	\$ 469.11
April-04	04/01/04	Bell South	\$0.00	\$29,089.19	\$103,185.94	\$103,185.94	05/27/04	04/30/04	27	0.0004536	\$ 1,263.74
April-04	04/01/04	Bell South	\$0.00	\$35,802.57	\$72,083.74	\$45,756.78	05/27/04	04/30/04	27	0.0004536	\$ 560.39
April-04	04/01/04	Bell South	\$0.00	\$14,118.57	\$32,030.80	\$29,922.28	05/27/04	04/30/04	27	0.0005224	\$ 422.05
April-04	04/01/04	Bell South	\$0.00	\$13,728.04	\$48,742.77	\$48,742.77	05/27/04	04/30/04	27	0.0004536	\$ 596.96
April-04	04/09/04	Bell South	\$0.00	\$23.39	\$0.00			05/10/04		0.00059	
April-04	04/09/04	Bell South	\$0.00	\$107.08	\$0.00			05/10/04		0.0005	
April-04	04/09/04	Bell South	\$0.00	\$26.81	\$146.06	\$146.06	05/27/04	05/10/04	17	0.0003333	\$ 0.83
April-04	04/09/04	Bell South	\$0.00	\$21.32	\$0.00			05/10/04		0.0004536	
April-04	04/09/04	Bell South	\$0.00	\$188.36	\$0.00			05/10/04		0.0004536	
April-04	04/09/04	Bell South	\$0.00	\$21.96	\$0.00			05/10/04		0.0004536	
April-04	04/09/04	Bell South	\$0.00	\$1.34	\$0.00			05/10/04		0.0004536	
April-04	04/12/04	Bell South	\$0.00	\$4,081.54	\$33,647.18	\$29,527.16	05/27/04	05/12/04	15	0.00059	\$ 261.32
April-04	04/12/04	Bell South	\$0.00	\$0.00	\$42.72	\$41.24	05/27/04	05/12/04	15	0.0005	\$ 0.31

**BELLSOUTH**  
Invoices Payments  
02/01/04 - 03/13/05

5/23/2005 1:24 PM

Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
April-04	04/12/04	Bell South	\$0.00	\$7,293.23	\$24,446.29	\$23,567.47	05/27/04	05/12/04	15	0.0003333	\$ 117.83
April-04	04/12/04	Bell South	\$0.00	\$3,345.49	\$21,008.18	\$18,616.49	05/27/04	05/12/04	15	0.0004536	\$ 126.67
April-04	04/12/04	Bell South	\$0.00	\$1,517.27	\$19,999.50	\$19,999.50	05/27/04	05/12/04	15	0.0004536	\$ 136.08
April-04	04/12/04	Bell South	\$0.00	\$506.41	\$2,128.17	\$1,349.07	05/27/04	05/12/04	15	0.0004536	\$ 9.18
April-04	04/12/04	Bell South	\$0.00	\$807.12	\$26,438.12	\$24,631.19	05/27/04	05/12/04	15	0.0005224	\$ 193.01
April-04	04/12/04	Bell South	\$0.00	\$303.20	\$3,984.47	\$3,984.47	05/27/04	05/12/04	15	0.0005	\$ 29.88
April-04	04/12/04	Bell South	\$0.00	\$2,300.96	\$25,680.63	\$25,680.63	05/27/04	05/12/04	15	0.0004536	\$ 174.73
April-04	04/13/04	Bell South	\$0.00	\$0.06	\$0.31	\$0.37	05/27/04	05/13/04	14	0.0005	\$ 0.00
April-04	04/13/04	Bell South	\$0.00	\$50.31	\$0.62	\$0.59	05/27/04	05/13/04	14	0.0004536	\$ 0.00
April-04	04/13/04	Bell South	\$0.00	\$0.14	\$1.22	\$1.36	05/27/04	05/13/04	14	0.0004536	\$ 0.01
<b>April-04 Total</b>			<b>\$0.00</b>	<b>\$148,484.04</b>	<b>\$561,872.31</b>	<b>\$514,919.98</b>					<b>\$ 5,733.55</b>
May-04	05/01/04	Bell South	(\$654,923.65)	\$0.00	\$2,993.75	\$2,993.75	06/01/04	05/31/04	1	0.00059	\$ 1.77
May-04	05/01/04	Bell South	(\$601,389.02)	\$0.00	\$108,066.30	\$104,440.74	06/01/04	05/31/04	1	0.0005	\$ 52.22
May-04	05/01/04	Bell South	(\$798,695.77)	\$0.00	\$1,145.30	\$1,145.30	06/01/04	05/31/04	1	0.0003333	\$ 0.38
May-04	05/01/04	Bell South	(\$1,351,947.69)	\$0.00	\$49,238.92	\$40,339.28	06/01/04	05/31/04	1	0.0004536	\$ 18.30
May-04	05/01/04	Bell South	(\$2,390,698.55)	\$0.00	\$106,614.41	\$99,401.95	06/01/04	05/31/04	1	0.0004536	\$ 45.09
May-04	05/01/04	Bell South	(\$2,048,097.73)	\$0.00	\$76,902.53	\$43,427.70	06/01/04	05/31/04	1	0.0004536	\$ 19.70
May-04	05/01/04	Bell South	(\$627,527.06)	\$0.00	\$30,518.93	\$29,495.00	06/01/04	05/31/04	1	0.0005224	\$ 15.41
May-04	05/01/04	Bell South	(\$883,824.35)	\$0.00	\$52,016.76	\$50,258.69	06/01/04	05/31/04	1	0.0004536	\$ 22.80
May-04	05/08/04	Bell South	(\$3,490.90)	\$0.00	\$0.00	\$0.00		06/08/04		0.00059	
May-04	05/08/04	Bell South	(\$30,780.16)	\$0.00	\$0.00	\$0.00		06/08/04		0.0003333	
May-04	05/08/04	Bell South	(\$1,984.70)	\$0.00	\$0.00	\$0.00		06/08/04		0.0004536	
May-04	05/08/04	Bell South	(\$15,128.58)	\$0.00	\$0.00	\$0.00		06/08/04		0.0004536	
May-04	05/08/04	Bell South	(\$2,482.91)	\$0.00	\$0.00	\$0.00		06/08/04		0.0005224	
May-04	05/08/04	Bell South	(\$7,198.87)	\$0.00	\$0.00	\$0.00		06/08/04		0.0004536	
May-04	05/09/04	Bell South	(\$1,376.00)	\$0.00	\$0.00	\$0.00		06/09/04		0.00059	
May-04	05/09/04	Bell South	(\$2,179.49)	\$0.00	\$0.00	\$0.00		06/09/04		0.0005	
May-04	05/09/04	Bell South	(\$667.95)	\$0.00	\$135.45	\$135.45	06/01/04	06/09/04		0.0003333	
May-04	05/09/04	Bell South	(\$793.45)	\$0.00	\$0.00	\$0.00		06/09/04		0.0004536	
May-04	05/09/04	Bell South	(\$6,884.50)	\$0.00	\$0.00	\$0.00		06/09/04		0.0004536	
May-04	05/09/04	Bell South	(\$359.93)	\$0.00	\$0.00	\$0.00		06/09/04		0.0004536	
May-04	05/09/04	Bell South	\$201.54	\$0.00	\$0.00	\$0.00		06/09/04		0.0005224	
May-04	05/09/04	Bell South	(\$88.24)	\$0.00	\$0.00	\$0.00		06/09/04		0.0004536	
May-04	05/12/04	Bell South	(\$78,700.91)	\$0.00	\$27,798.20	\$27,798.20	06/01/04	06/11/04		0.00059	
May-04	05/12/04	Bell South	\$0.00	\$0.00	\$40.88	\$40.88	06/01/04	06/11/04		0.0005	
May-04	05/12/04	Bell South	(\$173,932.62)	\$0.00	\$22,446.41	\$21,688.97	06/01/04	06/11/04		0.0003333	
May-04	05/12/04	Bell South	(\$79,847.78)	\$0.00	\$22,444.94	\$18,403.41	06/01/04	06/11/04		0.0004536	
May-04	05/12/04	Bell South	(\$19,440.72)	\$0.00	\$21,973.85	\$20,481.95	06/01/04	06/11/04		0.0004536	
May-04	05/12/04	Bell South	(\$9,319.95)	\$0.00	\$2,474.97	\$1,397.64	06/01/04	06/11/04		0.0004536	
May-04	05/12/04	Bell South	(\$11,570.77)	\$0.00	\$24,208.50	\$23,387.87	06/01/04	06/11/04		0.0005224	
May-04	05/12/04	Bell South	(\$6,300.58)	\$0.00	\$3,537.02	\$3,537.02	06/01/04	06/11/04		0.0005	
May-04	05/12/04	Bell South	(\$41,808.56)	\$0.00	\$28,302.27	\$27,349.68	06/01/04	06/11/04		0.0004536	
May-04	05/13/04	Bell South	\$0.00	\$0.00	\$0.39	\$0.39	06/01/04	06/14/04		0.0005	
May-04	05/13/04	Bell South	\$0.00	\$0.00	\$0.93	\$0.93	06/01/04	06/14/04		0.0004536	
May-04	05/13/04	Bell South	\$0.00	\$0.00	\$1.36	\$1.36	06/01/04	06/14/04		0.0004536	
<b>May-04 Total</b>			<b>(\$9,851,239.86)</b>	<b>\$0.00</b>	<b>\$580,862.07</b>	<b>\$515,726.16</b>					<b>\$ 175.66</b>
June-04	06/01/04	Bell South	\$181,866.69	\$0.00	\$3,022.92	\$3,022.92	7/20/2004	6/30/2004	20	0.00059	\$ 35.67
June-04	06/01/04	Bell South	(\$104,213.88)	\$0.00	\$105,088.80	\$101,562.73	7/20/2004	6/30/2004	20	0.0005	\$ 1,015.63
June-04	06/01/04	Bell South	\$50,018.68	\$0.00	\$1,123.87	\$1,066.17	7/20/2004	6/30/2004	20	0.0003333	\$ 7.24
June-04	06/01/04	Bell South	\$13,080.35	\$0.00	\$49,343.70	\$42,680.38	7/20/2004	6/30/2004	20	0.0004536	\$ 387.01
June-04	06/01/04	Bell South	\$328,513.94	\$0.00	\$99,370.54	\$96,449.64	7/20/2004	6/30/2004	20	0.0004536	\$ 874.99
June-04	06/01/04	Bell South	\$2,738.80	\$0.00	\$30,233.75	\$30,233.75	7/20/2004	6/30/2004	20	0.0004536	\$ 274.28
June-04	06/01/04	Bell South	(\$27,508.12)	\$0.00	\$28,017.23	\$27,077.25	7/20/2004	6/30/2004	20	0.0005224	\$ 282.90
June-04	06/01/04	Bell South	\$74,879.76	\$0.00	\$49,656.14	\$47,990.39	7/20/2004	6/30/2004	20	0.0004536	\$ 435.37
June-04	06/08/04	Bell South	(\$9,123.07)	\$0.00	\$0.00	\$0.00		7/8/2004		0.0003333	
June-04	06/08/04	Bell South	(\$0.33)	\$0.00	\$0.00	\$0.00		7/8/2004		0.0004536	
June-04	06/08/04	Bell South	\$0.30	\$0.00	\$0.00	\$0.00		7/8/2004		0.0004536	
June-04	06/09/04	Bell South	(\$3.93)	\$0.00	\$0.00	\$0.00		7/9/2004		0.00059	
June-04	06/09/04	Bell South	\$4.22	\$0.00	\$135.50	\$130.95	7/20/2004	7/9/2004	11	0.0003333	\$ 0.48
June-04	06/09/04	Bell South	(\$120.08)	\$0.00	\$0.00	\$0.00		7/9/2004		0.0004536	
June-04	06/09/04	Bell South	(\$456.77)	\$0.00	\$0.00	\$0.00		7/9/2004		0.0004536	
June-04	06/09/04	Bell South	\$1,953.60	\$0.00	\$0.00	\$0.00		7/9/2004		0.0005224	
June-04	06/12/04	Bell South	\$1,457.44	\$0.00	\$29,989.48	\$29,989.48	7/20/2004	7/12/2004	8	0.00059	\$ 141.55
June-04	06/12/04	Bell South	\$0.31	\$0.00	\$0.00	\$0.00		7/12/2004		0.0005	
June-04	06/12/04	Bell South	\$680.62	\$0.00	\$22,804.77	\$22,014.46	7/20/2004	7/12/2004	8	0.0003333	\$ 58.70

**BELLSOUTH**  
Invoices Payments  
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Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
June-04	06/12/04	Bell South	\$655.85	\$0.00	\$22,126.37	\$19,130.73	7/20/2004	7/12/2004	8	0.0004536 \$	69.42
June-04	06/12/04	Bell South	\$888.21	\$0.00	\$20,203.45	\$19,610.94	7/20/2004	7/12/2004	8	0.0004536 \$	71.16
June-04	06/12/04	Bell South	(\$3,793.79)	\$0.00	\$2,289.80	\$2,289.80	7/20/2004	7/12/2004	8	0.0004536 \$	8.31
June-04	06/12/04	Bell South	\$1,007.59	\$0.00	\$25,670.13	\$24,809.31	7/20/2004	7/12/2004	8	0.0005224 \$	103.68
June-04	06/12/04	Bell South	\$151.84	\$0.00	\$3,193.92	\$3,193.92	7/20/2004	7/12/2004	8	0.0005 \$	12.78
June-04	06/12/04	Bell South	\$826.73	\$0.00	\$31,250.93	\$30,203.01	7/20/2004	7/12/2004	8	0.0004536 \$	109.60
June-04	06/13/04	Bell South	(\$0.32)	\$0.00	\$0.00			7/13/2004		0.0005 \$	
June-04	06/13/04	Bell South	(\$3,388.78)	\$0.00	\$1.06			7/13/2004		0.0004536 \$	
June-04	06/13/04	Bell South	(\$6.93)	\$0.00	\$0.00			7/13/2004		0.0004536 \$	
<b>June-04 Total</b>			<b>\$510,088.93</b>	<b>\$0.00</b>	<b>\$523,522.16</b>	<b>\$501,455.83</b>					<b>\$ 3,888.78</b>
July-04	07/01/04	Bell South	\$165.46	\$0.00	\$0.00			08/02/04		0.00059 \$	
July-04	07/01/04	Bell South	\$0.00	\$0.00	\$3,001.07	\$3,001.07	08/25/04	08/02/04	23	0.00059 \$	40.72
July-04	07/01/04	Bell South	(\$111,650.31)	\$0.00	\$105,986.93	\$105,986.93	08/25/04	08/02/04	23	0.0005 \$	1,218.85
July-04	07/01/04	Bell South	\$0.00	\$0.11	\$961.46	\$961.57	08/25/04	08/02/04	23	0.0003333 \$	7.37
July-04	07/01/04	Bell South	\$0.00	\$5.63	\$52,215.24	\$43,770.19	08/25/04	08/02/04	23	0.0004536 \$	456.65
July-04	07/01/04	Bell South	\$109,730.23	\$56.86	\$98,969.91	\$98,957.22	08/25/04	08/02/04	23	0.0004536 \$	1,032.40
July-04	07/01/04	Bell South	\$0.00	\$28.71	\$2,560.40	\$2,560.40	08/25/04	08/02/04	23	0.0004536 \$	26.71
July-04	07/01/04	Bell South	\$0.00	\$3.30	\$28,051.54	\$28,048.02	08/25/04	08/02/04	23	0.0005224 \$	337.00
July-04	07/01/04	Bell South	(\$5,641.89)	\$0.00	\$0.00			08/02/04		0.0004536 \$	
July-04	07/01/04	Bell South	\$0.00	\$2.70	\$49,728.21	\$49,730.91	08/25/04	08/02/04	23	0.0004536 \$	518.83
July-04	07/09/04	Bell South	\$0.00	\$0.00	\$215.52	\$215.52	08/25/04	08/09/04	16	0.0003333 \$	1.15
July-04	07/12/04	Bell South	\$0.00	\$22.34	\$31,387.59	\$31,372.63	08/25/04	08/12/04	13	0.00059 \$	240.63
July-04	07/12/04	Bell South	\$0.00	\$0.54	\$23,143.50	\$23,124.79	08/25/04	08/12/04	13	0.0003333 \$	100.20
July-04	07/12/04	Bell South	\$0.00	\$2.55	\$19,489.40	\$16,335.40	08/25/04	08/12/04	13	0.0004536 \$	96.33
July-04	07/12/04	Bell South	\$0.00	\$1.20	\$17,570.93	\$17,563.19	08/25/04	08/12/04	13	0.0004536 \$	103.57
July-04	07/12/04	Bell South	\$0.00	\$0.83	\$2,303.41	\$2,302.59	08/25/04	08/12/04	13	0.0004536 \$	13.58
July-04	07/12/04	Bell South	\$0.00	\$2.34	\$26,330.63	\$26,325.69	08/25/04	08/12/04	13	0.0005224 \$	178.78
July-04	07/12/04	Bell South	\$0.00	\$0.09	\$3,262.98	\$3,261.80	08/25/04	08/12/04	13	0.0005 \$	21.20
July-04	07/12/04	Bell South	\$0.00	\$0.93	\$30,428.20	\$30,418.82	08/25/04	08/12/04	13	0.0004536 \$	179.37
July-04	07/13/04	Bell South	\$0.00	\$0.00	\$0.03			08/13/04		0.0005 \$	
July-04	07/13/04	Bell South	\$0.00	\$0.00	\$0.95	\$0.95	08/25/04	08/13/04	12	0.0004536 \$	0.01
<b>July-04 Total</b>			<b>(\$7,396.51)</b>	<b>\$128.13</b>	<b>\$495,607.90</b>	<b>\$483,937.69</b>					<b>\$ 4,573.35</b>
August-04	08/01/04	Bellsouth	\$0.00	\$0.00	\$2,998.51	\$2,998.51	9/15/2004	9/1/2004	14	0.00059 \$	24.77
August-04	08/01/04	Bellsouth	\$208,511.27	\$0.00	\$82,010.54	\$82,010.54	9/15/2004	9/1/2004	14	0.0005 \$	574.07
August-04	08/01/04	Bellsouth	\$0.00	\$0.12	\$913.84	\$913.96	9/15/2004	9/1/2004	14	0.0003333 \$	4.26
August-04	08/01/04	Bellsouth	\$0.00	\$5.82	\$37,743.51	\$33,148.20	9/15/2004	9/1/2004	14	0.0004536 \$	210.50
August-04	08/01/04	Bellsouth	(\$244,159.71)	\$0.00	\$88,640.18	\$88,640.18	9/15/2004	9/1/2004	14	0.0004536 \$	562.90
August-04	08/01/04	Bellsouth	(\$64,230.97)	\$0.00	\$2,695.18	\$2,695.18	9/15/2004	9/1/2004	14	0.0004536 \$	17.12
August-04	08/01/04	Bellsouth	\$0.00	\$3.40	\$25,799.76	\$25,803.16	9/15/2004	9/1/2004	14	0.0005224 \$	188.71
August-04	08/01/04	Bellsouth	\$0.00	\$2.80	\$41,918.45	\$41,921.25	9/15/2004	9/1/2004	14	0.0004536 \$	286.22
August-04	08/09/04	Bellsouth	\$0.00	\$0.00	\$237.79	\$237.79	9/15/2004	9/8/2004	7	0.0003333 \$	0.55
August-04	08/12/04	Bellsouth	\$0.00	\$23.09	\$29,049.61	\$29,072.70	9/15/2004	9/13/2004	2	0.00059 \$	34.31
August-04	08/12/04	Bellsouth	\$0.00	\$0.56	\$21,551.43	\$21,551.99	9/15/2004	9/13/2004	2	0.0003333 \$	14.37
August-04	08/12/04	Bellsouth	\$0.00	\$2.64	\$16,058.92	\$14,083.46	9/15/2004	9/13/2004	2	0.0004536 \$	12.78
August-04	08/12/04	Bellsouth	\$0.00	\$1.23	\$5,585.96	\$5,587.19	9/15/2004	9/13/2004	2	0.0004536 \$	5.07
August-04	08/12/04	Bellsouth	\$0.00	\$0.85	\$2,543.49	\$2,544.34	9/15/2004	9/13/2004	2	0.0004536 \$	2.31
August-04	08/12/04	Bellsouth	\$0.00	\$2.43	\$23,238.07	\$23,240.50	9/15/2004	9/13/2004	2	0.0005224 \$	24.28
August-04	08/12/04	Bellsouth	\$0.00	\$0.09	\$3,395.50	\$3,395.59	9/15/2004	9/13/2004	2	0.0005 \$	3.40
August-04	08/12/04	Bellsouth	\$0.00	\$0.95	\$12,655.89	\$12,656.84	9/15/2004	9/13/2004	2	0.0004536 \$	11.48
August-04	08/13/04	Bellsouth	\$0.00	\$0.00	\$0.83	\$0.83	9/15/2004	9/13/2004	2	0.0004536 \$	0.00
<b>August-04 Total</b>			<b>(\$99,879.41)</b>	<b>\$43.98</b>	<b>\$397,037.46</b>	<b>\$390,502.21</b>					<b>\$ 1,957.10</b>
September-04	09/01/04	Bellsouth	\$0.00	\$0.00	\$3,247.54	\$2,238.72	10/18/2004	10/1/2004	17	0.00059 \$	22.45
September-04	09/01/04	Bellsouth	\$0.00	\$38.24	\$79,699.06	\$79,699.06	10/18/2004	10/1/2004	17	0.0005 \$	677.44
September-04	09/01/04	Bellsouth	\$0.00	\$0.38	\$1,082.39	\$1,044.98	10/18/2004	10/1/2004	17	0.0003333 \$	5.92
September-04	09/01/04	Bellsouth	\$0.00	\$23.95	\$31,620.26	\$24,547.27	10/18/2004	10/1/2004	17	0.0004536 \$	189.29
September-04	09/01/04	Bellsouth	\$0.00	\$32.47	\$85,123.68	\$74,982.40	10/18/2004	10/1/2004	17	0.0004536 \$	578.20
September-04	09/01/04	Bellsouth	\$0.00	\$0.85	\$2,445.77	\$2,446.62	10/18/2004	10/1/2004	17	0.0004536 \$	18.87
September-04	09/01/04	Bellsouth	\$0.00	\$14.02	\$23,089.33	\$18,035.89	10/18/2004	10/1/2004	17	0.0005224 \$	160.17
September-04	09/01/04	Bellsouth	\$0.00	\$19.10	\$39,826.74	\$39,826.74	10/18/2004	10/1/2004	17	0.0004536 \$	307.11
September-04	09/09/04	Bellsouth	\$0.00	\$0.00	\$6.97	\$6.97	10/18/2004	10/8/2004	10	0.0003333 \$	0.02
September-04	09/12/04	Bellsouth	\$0.00	\$30.41	\$28,343.81	\$23,911.09	10/18/2004	10/12/2004	6	0.00059 \$	84.65
September-04	09/12/04	Bellsouth	\$0.00	\$3.62	\$6,776.32	\$6,776.32	10/18/2004	10/12/2004	6	0.0003333 \$	13.55
September-04	09/12/04	Bellsouth	\$0.00	\$7.02	\$5,133.74	\$5,110.22	10/18/2004	10/12/2004	6	0.0004536 \$	13.91
September-04	09/12/04	Bellsouth	\$0.00	\$4.37	\$0.00	\$4.37	10/18/2004	10/12/2004	6	0.0004536 \$	0.01
September-04	09/12/04	Bellsouth	\$0.00	\$1.26	\$0.00	\$1.26	10/18/2004	10/12/2004	6	0.0004536 \$	0.00

## BELL SOUTH

Invoices Payments

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Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
September-04	09/12/04	BellSouth	\$0.00	\$7.87	\$21,206.63	\$21,174.55	10/18/2004	10/12/2004	6	0.0005224	\$ 66.37
September-04	09/12/04	BellSouth	\$0.00	\$0.78	\$0.00	\$0.78	10/18/2004	10/12/2004	6	0.0005	\$ 0.00
September-04	09/12/04	BellSouth	\$0.00	\$6.39	\$1,178.95	\$1,178.95	10/18/2004	10/12/2004	6	0.0004536	\$ 3.21
September-04	09/13/04	BellSouth	\$0.00	\$0.00	\$0.69	\$0.69	10/18/2004	10/13/2004	5	0.0004536	\$ 0.00
<b>September-04 Total</b>			<b>\$0.00</b>	<b>\$190.73</b>	<b>\$328,781.88</b>	<b>\$300,986.88</b>					<b>\$ 2,141.19</b>
October-04	10/01/04	BellSouth	\$0.00	\$1.25	\$3,047.54	\$3,048.79	11/16/2004	11/1/2004	15	0.00059	\$ 26.98
October-04	10/01/04	BellSouth	\$0.00	\$17.48	\$79,553.78	\$79,553.78	11/16/2004	11/1/2004	15	0.0005	\$ 596.65
October-04	10/01/04	BellSouth	\$137.93	\$0.24	\$1,162.95	\$1,163.19	11/16/2004	11/1/2004	15	0.0003333	\$ 5.82
October-04	10/01/04	BellSouth	(\$37.39)	\$17.88	\$26,066.40	\$26,066.40	11/16/2004	11/1/2004	15	0.0004536	\$ 177.36
October-04	10/01/04	BellSouth	\$12,324.96	\$17.17	\$76,112.94	\$76,112.94	11/16/2004	11/1/2004	15	0.0004536	\$ 517.87
October-04	10/01/04	BellSouth	\$0.00	\$0.53	\$2,546.55	\$2,547.08	11/16/2004	11/1/2004	15	0.0004536	\$ 17.33
October-04	10/01/04	BellSouth	\$0.00	\$9.07	\$9,003.45	\$9,012.52	11/16/2004	11/1/2004	15	0.0005224	\$ 70.62
October-04	10/01/04	BellSouth	\$0.00	\$10.82	\$38,746.29	\$38,746.29	11/16/2004	11/1/2004	15	0.0004536	\$ 263.63
October-04	10/12/04	BellSouth	(\$37.30)	\$3.17	\$20,738.21	\$20,741.38	11/16/2004	11/12/2004	4	0.00059	\$ 48.95
October-04	10/12/04	BellSouth	\$0.00	\$0.00	\$4.63	\$4.63	11/16/2004	11/12/2004	4	0.0005	\$ 0.01
October-04	10/12/04	BellSouth	\$0.00	\$0.79	\$2,436.93	\$2,437.72	11/16/2004	11/12/2004	4	0.0003333	\$ 3.25
October-04	10/12/04	BellSouth	\$0.00	\$5.03	\$10,214.50	\$10,219.53	11/16/2004	11/12/2004	4	0.0004536	\$ 18.54
October-04	10/12/04	BellSouth	\$0.00	\$1.28	\$1,009.00	\$1,010.28	11/16/2004	11/12/2004	4	0.0004536	\$ 1.83
October-04	10/12/04	BellSouth	\$0.00	\$0.87	\$0.00	\$0.87	11/16/2004	11/12/2004	4	0.0004536	\$ 0.00
October-04	10/12/04	BellSouth	\$0.00	\$2.74	\$17,163.50	\$17,166.24	11/16/2004	11/12/2004	4	0.0005224	\$ 35.87
October-04	10/12/04	BellSouth	\$0.00	\$0.15	\$0.00	\$0.15	11/16/2004	11/12/2004	4	0.0005	\$ 0.00
October-04	10/12/04	BellSouth	\$0.00	\$1.12	\$5,827.52	\$5,828.64	11/16/2004	11/12/2004	4	0.0004536	\$ 10.58
October-04	10/13/04	BellSouth	\$1.48	\$0.00	\$0.97	\$0.97	11/16/2004	11/12/2004	4	0.0004536	\$ 0.00
<b>October-04 Total</b>			<b>\$12,389.66</b>	<b>\$89.59</b>	<b>\$293,635.16</b>	<b>\$293,661.40</b>					<b>\$ 1,795.29</b>
Nov-04	11/01/04	BellSouth	\$0.00	\$1.69	\$2,878.45	\$2,878.45	12/20/2004	12/1/2004	19	0.00059	\$ 32.27
Nov-04	11/01/04	BellSouth	\$2,329.04	\$18.32	\$77,839.78	\$77,839.78	12/20/2004	12/1/2004	19	0.0005	\$ 739.48
Nov-04	11/01/04	BellSouth	\$0.00	\$0.31	\$1,173.63	\$1,133.10	12/20/2004	12/1/2004	19	0.0003333	\$ 7.18
Nov-04	11/01/04	BellSouth	\$0.00	\$20.14	\$28,327.65	\$28,327.65	12/20/2004	12/1/2004	19	0.0004536	\$ 244.14
Nov-04	11/01/04	BellSouth	\$0.00	\$20.34	\$77,349.50	\$77,349.50	12/20/2004	12/1/2004	19	0.0004536	\$ 666.63
Nov-04	11/01/04	BellSouth	\$0.00	\$0.52	\$2,352.48	\$2,352.48	12/20/2004	12/1/2004	19	0.0004536	\$ 20.27
Nov-04	11/01/04	BellSouth	\$0.00	\$10.31	\$5,044.13	\$5,044.13	12/20/2004	12/1/2004	19	0.0005224	\$ 50.07
Nov-04	11/01/04	BellSouth	(\$3,423.82)	\$10.95	\$37,667.09	\$37,667.09	12/20/2004	12/1/2004	19	0.0004536	\$ 324.63
Nov-04	11/12/04	BellSouth	\$0.00	\$8.98	\$21,018.91	\$21,018.91	12/20/2004	12/13/2004	7	0.00059	\$ 86.81
Nov-04	11/12/04	BellSouth	(\$1.48)	\$0.00	\$0.00	\$4.91	12/20/2004	12/13/2004	7	0.0005	\$ 0.02
Nov-04	11/12/04	BellSouth	(\$2,497.66)	\$0.36	\$3,526.93	\$3,526.93	12/20/2004	12/13/2004	7	0.0003333	\$ 8.23
Nov-04	11/12/04	BellSouth	\$0.00	\$5.11	\$15,414.88	\$15,414.88	12/20/2004	12/13/2004	7	0.0004536	\$ 48.95
Nov-04	11/12/04	BellSouth	\$0.00	\$1.10	\$1,715.13	\$1,715.13	12/20/2004	12/13/2004	7	0.0004536	\$ 5.45
Nov-04	11/12/04	BellSouth	\$0.00	\$0.85	\$0.00	\$0.85	12/20/2004	12/13/2004	7	0.0004536	\$ 0.00
Nov-04	11/12/04	BellSouth	\$0.00	\$3.28	\$14,997.97	\$14,997.97	12/20/2004	12/13/2004	7	0.0005224	\$ 54.84
Nov-04	11/12/04	BellSouth	\$0.00	\$0.04	\$0.00	\$0.04	12/20/2004	12/13/2004	7	0.0005	\$ 0.00
Nov-04	11/12/04	BellSouth	(\$2,000.51)	\$0.88	\$10,041.30	\$10,041.30	12/20/2004	12/13/2004	7	0.0004536	\$ 31.88
Nov-04	11/13/04	BellSouth	\$0.00	\$0.00	\$0.57	\$0.57	12/20/2004	12/13/2004	7	0.0004536	\$ 0.00
<b>Nov-04 Total</b>			<b>(\$5,594.43)</b>	<b>\$103.18</b>	<b>\$299,348.40</b>	<b>\$299,313.67</b>					<b>\$ 2,320.84</b>
Dec-04	12/01/04	BellSouth	\$0.00	\$1.80	\$2,913.39	\$2,915.19	1/20/2005	12/31/2004	20	0.00059	\$ 34.40
Dec-04	12/01/04	BellSouth	\$0.00	\$18.29	\$83,253.73	\$83,253.73	1/20/2005	12/31/2004	20	0.0005	\$ 832.54
Dec-04	12/01/04	BellSouth	(\$42.48)	\$0.30	\$1,222.86	\$1,180.68	1/20/2005	12/31/2004	20	0.0003333	\$ 7.87
Dec-04	12/01/04	BellSouth	(\$3,349.21)	\$19.19	\$29,153.02	\$25,823.00	1/20/2005	12/31/2004	20	0.0004536	\$ 234.27
Dec-04	12/01/04	BellSouth	(\$20.43)	\$20.43	\$86,638.23	\$86,638.23	1/20/2005	12/31/2004	20	0.0004536	\$ 785.98
Dec-04	12/01/04	BellSouth	\$0.00	\$0.54	\$2,418.70	\$2,419.24	1/20/2005	12/31/2004	20	0.0004536	\$ 21.95
Dec-04	12/01/04	BellSouth	(\$7.10)	\$7.10	\$4,876.77	\$4,876.77	1/20/2005	12/31/2004	20	0.0005224	\$ 50.95
Dec-04	12/01/04	BellSouth	(\$9.66)	\$9.66	\$37,831.64	\$37,831.64	1/20/2005	12/31/2004	20	0.0004536	\$ 343.21
Dec-04	12/12/04	BellSouth	(\$108.48)	\$6.91	\$19,851.37	\$19,749.80	1/20/2005	1/12/2005	8	0.00059	\$ 93.22
Dec-04	12/12/04	BellSouth	\$0.00	\$0.00	\$4.91	\$4.91	1/20/2005	1/12/2005	8	0.0005	\$ 0.02
Dec-04	12/12/04	BellSouth	\$0.00	\$0.01	\$3,662.46	\$3,662.47	1/20/2005	1/12/2005	8	0.0003333	\$ 9.77
Dec-04	12/12/04	BellSouth	\$0.00	\$4.57	\$15,738.12	\$13,946.34	1/20/2005	1/12/2005	8	0.0004536	\$ 50.61
Dec-04	12/12/04	BellSouth	\$0.00	\$0.92	\$2,118.95	\$2,119.87	1/20/2005	1/12/2005	8	0.0004536	\$ 7.69
Dec-04	12/12/04	BellSouth	\$0.00	\$0.81	\$0.00	\$0.81	1/20/2005	1/12/2005	8	0.0004536	\$ 0.00
Dec-04	12/12/04	BellSouth	\$0.00	\$1.84	\$12,520.06	\$12,521.90	1/20/2005	1/12/2005	8	0.0005224	\$ 52.33
Dec-04	12/12/04	BellSouth	\$0.00	\$0.68	\$9,896.80	\$9,897.48	1/20/2005	1/12/2005	8	0.0004536	\$ 35.92
Dec-04	12/13/04	BellSouth	\$0.00	\$0.00	\$0.59	\$0.59	1/20/2005	1/13/2005	7	0.0004536	\$ 0.00
<b>Dec-04 Total</b>			<b>(\$3,537.36)</b>	<b>\$93.05</b>	<b>\$312,101.60</b>	<b>\$306,842.65</b>					<b>\$ 2,560.72</b>
Jan-05	01/01/05	BellSouth	\$0.00	\$2.06	\$2,602.65	\$2,602.65	2/16/2005	1/31/2005	16	0.00059	\$ 24.57
Jan-05	01/01/05	BellSouth	\$0.00	\$24.29	\$76,712.12	\$76,712.12	2/16/2005	1/31/2005	16	0.0005	\$ 613.70
Jan-05	01/01/05	BellSouth	(\$36.20)	\$0.39	\$1,220.56	\$1,184.75	2/16/2005	1/31/2005	16	0.0003333	\$ 6.32
Jan-05	01/01/05	BellSouth	\$0.00	\$22.25	\$16,093.58	\$16,093.58	2/16/2005	1/31/2005	16	0.0004536	\$ 116.80

**BELLSOUTH**  
Invoices Payments  
02/01/04 - 03/13/05

5/23/2005 1:24 PM

Bill Month	Bill Date	Title	Adjustments	LPCs Billed	Usage	Payment	Payment Date	Bill Due Date	Days Late	Daily Interest Rate	LPC Due
Jan-05	01/01/05	BellSouth	(\$26.61)	\$26.61	\$84,901.41	\$84,901.41	2/16/2005	1/31/2005	16	0.0004536	\$ 616.18
Jan-05	01/01/05	BellSouth	\$2,738.80	\$0.88	\$2,178.78	\$2,179.46	2/16/2005	1/31/2005	16	0.0004536	\$ 15.82
Jan-05	01/01/05	BellSouth	\$0.00	\$6.74	\$4,844.80	\$4,851.54	2/16/2005	1/31/2005	16	0.0005224	\$ 40.55
Jan-05	01/01/05	BellSouth	(\$12.30)	\$12.30	\$33,855.67	\$33,855.67	2/16/2005	1/31/2005	16	0.0004536	\$ 245.71
Jan-05	01/12/05	BellSouth	(\$10.00)	\$10.00	\$8,092.27	\$8,092.27	2/16/2005	2/11/2005	5	0.00059	\$ 23.87
Jan-05	01/12/05	BellSouth	\$0.00	\$0.28	\$3,298.74	\$3,299.02	2/16/2005	2/11/2005	5	0.0003333	\$ 5.50
Jan-05	01/12/05	BellSouth	\$0.00	\$6.33	\$15,756.57	\$15,762.90	2/16/2005	2/11/2005	5	0.0004536	\$ 35.75
Jan-05	01/12/05	BellSouth	\$0.00	\$1.13	\$1,981.31	\$1,982.44	2/16/2005	2/11/2005	5	0.0004536	\$ 4.50
Jan-05	01/12/05	BellSouth	\$0.00	\$0.83	\$0.00	\$0.83	2/16/2005	2/11/2005	5	0.0004536	\$ 0.00
Jan-05	01/12/05	BellSouth	\$0.00	\$3.71	\$10,971.91	\$10,975.82	2/16/2005	2/11/2005	5	0.0005224	\$ 28.67
Jan-05	01/12/05	BellSouth	\$0.00	\$1.76	\$7,166.25	\$7,168.01	2/16/2005	2/11/2005	5	0.0004536	\$ 16.26
Jan-05	01/13/05	BellSouth	\$0.00	\$0.00	\$0.63	\$0.63	2/16/2005	2/14/2005	2	0.0004536	\$ 0.00
<b>Jan-05 Total</b>			<b>\$2,653.69</b>	<b>\$119.36</b>	<b>\$269,675.19</b>	<b>\$269,662.90</b>					<b>\$ 1,794.19</b>
Feb-05	02/01/05	BellSouth	\$0.00	\$2.02	\$2,740.40	\$2,740.40	03/09/05	03/01/05	8	0.00059	\$ 12.93
Feb-05	02/01/05	BellSouth	(\$74.04)	\$24.58	\$73,216.83	\$73,216.83	03/09/05	03/01/05	8	0.0005	\$ 292.87
Feb-05	02/01/05	BellSouth	(\$272.84)	\$0.32	\$1,158.32	\$1,158.64	03/09/05	03/01/05	8	0.0003333	\$ 3.09
Feb-05	02/01/05	BellSouth	(\$9,789.10)	\$21.31	\$10,061.26	\$9,064.45	03/09/05	03/01/05	8	0.0004536	\$ 32.89
Feb-05	02/01/05	BellSouth	\$0.00	\$27.86	\$89,446.98	\$89,446.98	03/09/05	03/01/05	8	0.0004536	\$ 324.59
Feb-05	02/01/05	BellSouth	\$0.00	\$0.66	\$1,614.86	\$1,615.52	03/09/05	03/01/05	8	0.0004536	\$ 5.86
Feb-05	02/01/05	BellSouth	(\$6,455.75)	\$4.22	\$5,001.89	\$5,001.89	03/09/05	03/01/05	8	0.0005224	\$ 20.90
Feb-05	02/01/05	BellSouth	\$0.00	\$11.79	\$29,309.85	\$29,309.85	03/09/05	03/01/05	8	0.0004536	\$ 106.36
Feb-05	02/09/05	BellSouth	(\$4.55)	\$0.00	\$0.00	\$0.00				0.0003333	
Feb-05	02/12/05	BellSouth	\$0.00	\$9.90	\$7,042.87	\$7,042.87	03/09/05	03/11/05		0.00059	
Feb-05	02/12/05	BellSouth	(\$42.19)	\$0.28	\$3,729.32	\$3,729.60	03/09/05	03/11/05		0.0003333	
Feb-05	02/12/05	BellSouth	(\$5,699.27)	\$5.74	\$14,503.49	\$12,744.20	03/09/05	03/11/05		0.0004536	
Feb-05	02/12/05	BellSouth	\$0.00	\$1.17	\$1,535.07	\$1,535.07	03/09/05	03/11/05		0.0004536	
Feb-05	02/12/05	BellSouth	\$0.00	\$0.83	\$0.00	\$0.83	03/09/05	03/11/05		0.0004536	
Feb-05	02/12/05	BellSouth	(\$5,227.33)	\$1.53	\$3,140.14	\$3,140.14	03/09/05	03/11/05		0.0005224	
Feb-05	02/12/05	BellSouth	(\$1.27)	\$0.00	\$21.78	\$21.78	03/09/05	03/11/05		0.0005	
Feb-05	02/12/05	BellSouth	\$0.00	\$1.74	\$5,824.78	\$5,824.78	03/09/05	03/11/05		0.0004536	
Feb-05	02/13/05	BellSouth	\$0.00	\$0.00	\$0.59	\$0.59	03/09/05	03/14/05		0.0004536	
<b>Feb-05 Total</b>			<b>(\$27,566.34)</b>	<b>\$114.05</b>	<b>\$248,348.43</b>	<b>\$245,594.42</b>					<b>\$ 799.50</b>
Mar-05	03/01/05	BellSouth	(\$1,658.93)	\$0.71	\$2,879.77	\$2,880.48	04/19/05	04/01/05	18	0.00059	\$ 30.59
Mar-05	03/01/05	BellSouth	\$0.00	\$17.64	\$68,138.93	\$42,883.53	04/19/05	04/01/05	18	0.0005	\$ 385.95
Mar-05	03/01/05	BellSouth	\$0.00	\$0.26	\$1,279.55	\$1,279.81	04/19/05	04/01/05	18	0.0003333	\$ 7.68
Mar-05	03/01/05	BellSouth	(\$39,931.91)	\$3.36	\$5,269.02	\$5,269.02	04/19/05	04/01/05	18	0.0004536	\$ 43.02
Mar-05	03/01/05	BellSouth	(\$20,391.85)	\$17.71	\$93,055.62	\$84,317.96	04/19/05	04/01/05	18	0.0004536	\$ 688.44
Mar-05	03/01/05	BellSouth	\$0.00	\$0.46	\$40,705.13	\$36,188.92	04/19/05	04/01/05	18	0.0004536	\$ 295.48
Mar-05	03/01/05	BellSouth	(\$17.41)	\$3.61	\$5,062.44	\$5,062.44	04/19/05	04/01/05	18	0.0005224	\$ 47.60
Mar-05	03/01/05	BellSouth	(\$3,574.26)	\$7.06	\$11,742.10	\$11,742.10	04/19/05	04/01/05	18	0.0004536	\$ 95.87
Mar-05	03/12/05	BellSouth	(\$11,996.75)	\$0.47	\$0.00	\$0.47	04/19/05	04/12/05	7	0.00059	\$ 0.00
Mar-05	03/12/05	BellSouth	\$0.00	\$0.00	\$3,400.77	\$3,400.77	04/19/05	04/12/05	7	0.0003333	\$ 7.93
Mar-05	03/12/05	BellSouth	(\$11,571.64)	\$1.45	\$10,578.40	\$10,579.85	04/19/05	04/12/05	7	0.0004536	\$ 33.59
Mar-05	03/12/05	BellSouth	(\$4,161.10)	\$0.09	\$0.00	\$0.09	04/19/05	04/12/05	7	0.0004536	\$ 0.00
Mar-05	03/12/05	BellSouth	(\$43.23)	\$0.57	\$257.84	\$258.41	04/19/05	04/12/05	7	0.0005224	\$ 0.94
Mar-05	03/12/05	BellSouth	\$0.00	\$0.00	\$22.99	\$22.99	04/19/05	04/12/05	7	0.0005	\$ 0.08
Mar-05	03/12/05	BellSouth	(\$1,543.92)	\$0.32	\$1,829.36	\$1,829.68	04/19/05	04/12/05	7	0.0004536	\$ 5.81
Mar-05	03/13/05	BellSouth	\$0.00	\$0.00	\$0.67	\$0.67	04/19/05	04/13/05	6	0.0004536	\$ 0.00
<b>Mar-05 Total</b>			<b>(\$94,891.00)</b>	<b>\$53.71</b>	<b>\$244,222.59</b>	<b>\$205,717.19</b>					<b>\$ 1,643.00</b>
<b>Grand Total</b>			<b>(\$9,565,294.34)</b>		<b>\$5,767,172.81</b>	<b>\$5,468,278.49</b>					<b>\$ 50,242.49</b>

**History of BellSouth's Payments to KMC under Current ICA Terms (30 days from Bill Date)**

Number of Invoices Paid      253  
Number of Invoices Paid Late      231  
Percentage of Invoices Paid Late      91.30%

**BEFORE THE  
SOUTH CAROLINA PUBLIC SERVICE COMMISSION  
DOCKET NO. 2005-57-C**

In the Matter of )

)  
Joint Petition for Arbitration of )  
NewSouth Communications, Corp., )  
NuVox Communications, Inc., )  
KMC Telecom V, Inc., )  
KMC Telecom III LLC, and )  
Xspedius [Affiliates] of an )  
Interconnection Agreement with )  
BellSouth Telecommunications, Inc. )  
Pursuant to Section 252(b) of the )  
Communications Act of 1934, )  
as Amended )

**CERTIFICATE OF SERVICE**

This is to certify that I have caused to be served this day, one (1) copy of the **Rebuttal Testimony of Joint Petitioners** by placing a copy of same in the care and custody of the United States Postal Service (unless otherwise specified), with proper first-class postage affixed hereto and addressed as follows:

Patrick Turner, Esquire  
**BellSouth Telecommunications, Inc.**  
P.O. Box 752  
Columbia SC 29202

Office of Regulatory Staff  
Legal Department  
PO Box 11263  
Columbia SC 29211

  
Carol Roof

May 23, 2005

Columbia, South Carolina

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2013-12-18  
2013-12-18  
2013-12-18

# ATTACHMENT B



1 MR. PRINGLE: I believe that the Joint  
2 Petitioners' witnesses will summarize in  
3 the order of Mr. Russell, Mr. Willis and  
4 Mr. Falvey.

5 CHAIRMAN MITCHELL: Certainly. Mr.  
6 Russell, please.

7 **SUMMARY OF ISSUES:** [MR. RUSSELL]

8 Good morning, Mr. Chairman and Commissioners. I'm here on  
9 behalf of NuVox Communications. We're headquartered in  
10 Greenville, South Carolina. We've been operating here since  
11 we received Commission approval in 1998. We have 750 employees  
12 here in South Carolina. We've invested in \$21 million in  
13 this state, have 60,000 access lines here.

14 ~~ISSUE NO. 4~~ The first issue that I'm responsible for  
15 is Issue No. 4. This is about establishing a reasonable  
16 limitation of liability provision for this Agreement.  
17 This is an issue that has important business implications  
18 for NuVox and Xspedius. Here we are seeking to replace  
19 BellSouth's standard limitation of liability provision  
20 with one that is commercially reasonable. Our proposal is  
21 that liability for negligence should be limited to an  
22 amount equal to 7.5% of the amount billed for services  
23 provided under the Agreement as of the day the claim arose.  
24 BellSouth's negligence and other non-performance should be  
25 part of BellSouth's cost of doing business, not the cost of

1 ~~doing business of the CLECs. We should not be forced to~~  
2 accept unlimited financial risk in the event of BellSouth's  
3 negligence.

4 ISSUE NO. 5 - The next issue is Issue No. 5. Issue 5  
5 is about whether BellSouth can, essentially, dictate the  
6 terms of our tariffs and customer service agreements or  
7 demand indemnification if the terms that we agree to with  
8 our customers do not mirror those found in BellSouth's  
9 standard tariff offerings. In a competitive marketplace,  
10 CLECs cannot ensure that it will be commercially reasonable  
11 to use limitation of liability terms that mirror those  
12 that BellSouth includes in its own tariffs. And we have  
13 no obligation to ensure BellSouth that we will do so as we  
14 compete against BellSouth when negotiating terms in competing  
15 customer service agreements. We also will not indemnify  
16 BellSouth in the event that any suit is based on BellSouth's  
17 negligence, gross negligence or willful misconduct or its  
18 failure to abide by applicable law. BellSouth must not be  
19 permitted to force the Joint Petitioners [inaudible] associated  
20 with BellSouth's own negligence, gross negligence or willful  
21 misconduct.

22 ISSUE NO. 6 - Issue 6 is about whether damages to  
23 end-users that result directly in any reasonable, fore-  
24 seeable manner from BellSouth's performance of this  
25 Agreement should be considered to be indirect, incidental,

1 or ~~consequential~~ BellSouth should be responsible for  
2 reasonably foreseeable damages directly and proximately  
3 caused by BellSouth, including to South Carolina businesses,  
4 consumers, and your constituents.

5 ISSUE NO. 7 - Issue 7 is about whether the heavy-  
6 handed, one-sided indemnification provisions proposed by  
7 BellSouth should be replaced with commercially, reasonable  
8 provisions. We propose that the party receiving services  
9 and paying for the services under this Agreement should be  
10 indemnified by the party providing services, the party that  
11 is being paid to provide the services, against any loss or  
12 damage reasonably arising from the providing party's failure  
13 to abide by applicable law or that party's negligence, gross  
14 negligence or willful misconduct. We refuse to indemnify  
15 BellSouth against all customer claims that could arise as  
16 a result of BellSouth's negligence or failure to comply with  
17 applicable law in providing services under this Agreement  
18 for which we will pay them. There is no obligation in the  
19 Act or elsewhere that suggests we must take on the burden  
20 of indemnifying BellSouth for their own negligence, gross  
21 negligence or willful misconduct. We ask the Commission to  
22 strike down BellSouth's attempt to shift costs for BellSouth's  
23 noncompliance to its competitor.

24 ISSUE NO. 12 - Issue 12 is the applicable law issue,  
25 ~~and it is about our objection to BellSouth's efforts to~~

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1 ~~upend fundamental principles of contracting~~ which applies  
2 to interconnection agreements and all other contracts.  
3 When the parties intend for standards to replace those  
4 found in applicable law, they must say so expressly or agree  
5 to terms that conflict with and displace specific requirements  
6 of applicable law. Such an intent cannot be implied in  
7 silence with respect to a particular requirement of applicable  
8 law and not be read into or replace that requirement. It is  
9 far easier to set forth negotiated exceptions to applicable  
10 law than it is to set forth all rules for which no exceptions  
11 were negotiated. This is black-letter law. It is consistent  
12 with Georgia Contract Law, which the parties have already  
13 agreed will govern the interpretation of this Agreement  
14 throughout BellSouth's nine state territory.

15 ISSUE NO. 100 - Issue 100 is one of several provisions  
16 in which BellSouth threatens to pull the plug on NuVox,  
17 Xspedius and its customers here in South Carolina. CLECs  
18 should not be required to calculate or request Aging Reports  
19 and pay all past due amounts on associated accounts in  
20 addition to those specified in BellSouth's notice of sus-  
21 pension or termination in order to avoid suspension or  
22 termination to NuVox or Xspedius and its customers. Suspension  
23 or termination, if ever imposed, should only apply to those  
24 services for which BellSouth has not been paid.

25 ~~ISSUE NO. 101 - Issue 101 is about the maximum deposit~~

1 ~~amount that BellSouth may request from CLECs. The maximum~~  
2 amount of a deposit BellSouth may request should not exceed  
3 one-month for services billed in advance, two-months for  
4 services billed in arrears. BellSouth has already agreed  
5 to this provision with ITC^DeltaCom, and we're willing to  
6 accept that provision today.

7 ISSUE NO. 103 - Issue 103 is about circumstances under  
8 which BellSouth could terminate service for failure by a  
9 CLEC to post a deposit. This drastic remedy is only appro  
10 priate in two contexts: when a deposit requested by  
11 BellSouth has been agreed to by NuVox or Xspedius and then  
12 simply not posted, or when a particular deposit has been  
13 ordered by this Commission and not posted. Otherwise,  
14 disputes over requested deposits and deposit refunds should  
15 be handled pursuant to the dispute resolution process  
16 already agreed to by the parties that is included in the  
17 General Terms And Conditions of this Agreement. A dispute  
18 over a requested deposit or a deposit refund should never  
19 be resolved by BellSouth unilaterally pulling the plug on  
20 a CLEC and its customers here in South Carolina.

21 ISSUE NO. 104 - The last issue that I'm responsible  
22 for is Issue 104. It's about whether the Agreement's dispute  
23 resolution provisions in the General Terms And Conditions  
24 should be modified so that in case of deposits, a Joint  
25 ~~Petitioner must file a complaint and post half of their~~

1 ~~requested deposit, that deposit demanded by BellSouth, to~~  
2 avoid unilateral termination by BellSouth. The Commission  
3 must reject BellSouth's proposal to displace the standard  
4 dispute resolution process with one that is coercive and  
5 one-sided. If the parties aren't able to agree on the need  
6 for or amount of a reasonable deposit, the Agreement's  
7 standard dispute resolution provision should be invoked.  
8 This process has prevailed for years, and has contributed to  
9 the successful negotiation and resolution of many deposit  
10 disputes. BellSouth's attempts to tip the scales in its  
11 favor by once again threatening the ultimate remedy of  
12 termination of service to a CLEC and in doing so, termination  
13 of services to its South Carolina customers by forcing  
14 Joint Petitioners to seek dispute resolution and post a  
15 deposit bond in order to avoid termination must be rejected.

16 ~~Thank you.~~

17 CHAIRMAN MITCHELL: Thank you, sir. At  
18 this time, we'll go to Mr. Willis.

19 MR. PRINGLE: Actually, Mr. Chairman,  
20 Mr. Willis was the lead witness on the  
21 issues that have been moved to the generic  
22 proceeding, so it will be Mr. Falvey.

23 CHAIRMAN MITCHELL: Okay, Mr. Falvey.

24 **SUMMARY OF ISSUES:** [MR. FALVEY]

25 Good morning. My name is Jim Falvey, and I'm Senior Vice

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1 take a ten minute break.

2 [Short Recess]

3 CHAIRMAN MITCHELL: Thank you. Be seated,  
4 please. Now, Mr. Pringle, if we would move  
5 on to the next, No. 4.

6 MR. PRINGLE: I believe, Mr. Chairman,  
7 that's Issue 4, and Mr. Russell will —

8 CHAIRMAN MITCHELL: Okay, Mr. Russell,  
9 if you would.

10 ISSUE NO. 4

11 SUMMARY BY MR. RUSSELL:

12 ~~Issue 4, Mr. Chairman and Commissioners, has to do with the~~  
13 ~~liability limitation provision for this Agreement. What~~  
14 ~~the Joint Petitioners are asking for is that BellSouth~~  
15 ~~take responsibility for its actions and that BellSouth be~~  
16 ~~responsible for its negligent actions so that it's a cost~~  
17 ~~of doing business for BellSouth, and not for the CLECs.~~

18 ~~Under our proposal, we have proposed that 7.5% of the~~  
19 ~~amounts billed by BellSouth at the time of a negligent act~~  
20 ~~should be available to the CLEC in the event that the CLEC~~  
21 ~~has to come out of pocket to its customers based on a~~  
22 ~~BellSouth act of negligence, not simply bill a credit for~~  
23 ~~the service that BellSouth provided negligently, but a~~  
24 ~~situation where if BellSouth provides a service in a~~  
25 ~~negligent fashion, then the date that they provided that~~

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1 ~~service negligently, that the CLECs should be able to recover~~  
2 up to 7.5% of the amounts billed.

3 So, in my example, let's say that on a certain day a  
4 BellSouth technician negligently turns down our customers  
5 in Pickens County. On the date of that issue that that act  
6 of negligence occurred, we had been billed by BellSouth  
7 \$1 million. If NuVox has customer complaints and NuVox has  
8 to come out of pocket money to those customers in Pickens  
9 County based on an act of BellSouth's negligence, that NuVox  
10 would be entitled to recover 7.5% of the amounts billed by  
11 BellSouth at that time. So, in my example, we would be  
12 entitled to recover \$75,000 of the \$1 million we would be  
13 responsible for paying BellSouth based on their act of  
14 negligence that caused us damage to our customers in Pickens  
15 County in that example.

16 This is very important to our company. BellSouth  
17 should be responsible for its acts of negligence. We have  
18 had instances here in Columbia. We've had instances in  
19 Pickens County where BellSouth's acts of negligence have  
20 forced upon us liability. All we're asking for is when  
21 BellSouth is negligent, that we have the ability to recover  
22 some damages.

23 We have other relationships with vendors, software  
24 vendors, other service providers, other ILECs — Alltel is  
25 an example here in South Carolina. If Alltel is negligent



1 in South Carolina in providing service to NuVox that NuVox  
2 pays for, we can recover up to \$250,000, or the aggregate  
3 amount of charges billed in that calendar year for an act  
4 of negligence. All we're asking for is that when we pay  
5 BellSouth for a service and they provide it negligently,  
6 that we be allowed to recover some amount based on their  
7 negligence.

8 Thank you.

9 CHAIRMAN MITCHELL: Thank you, sir. Ms.

10 Belser?

11 CROSS EXAMINATION BY MS. BELSER:

12 Q Hi, Mr. Russell.

13 A How are you?

14 Q Fine. Mr. Russell, in the Joint Petitioners' Exhibit A  
15 attached to the direct testimony, the disputed language  
16 is listed, and I note that in the first sentence it says,

17 With respect to any claim or suit, whether based  
18 in contract, tort or any other theory of legal  
19 liability, by either party, any end-user of  
20 either party, or by any other person or entity  
21 ....

22  
23 Would that allow the end-user to recover damages from  
24 BellSouth?

25 A That section is reciprocal, so, it applies equally to both  
26 parties. It applies to NuVox. It applies to BellSouth.  
27 Under that scenario, it would be a claim by an end-user  
28 against — that NuVox was responsible for. We would be

1 responsible for paying damages because we recover from  
2 BellSouth.

3 Q The language proposed by BellSouth, can you speak to whether  
4 or not that that language is generally the limitation of  
5 liability language that is used in the telecommunications  
6 industry today?

7 A This is the language that is in our current Interconnection  
8 Agreement with BellSouth. We've been operating with BellSouth  
9 now for seven years. Our ~~experience has been that there are~~  
10 ~~instances where we are left holding the bag for BellSouth's~~  
11 ~~negligence. I do not believe that is standard to the~~  
12 ~~industry based on the Alltel agreement that NewSouth Com-~~  
13 ~~munications has.~~ In other words, there are alternatives  
14 out there. ~~We believe that it's reasonable for BellSouth~~  
15 ~~to be responsible for its acts of negligence. Our proposal~~  
16 ~~is to defend the 7.5% of what we pay.~~

17 So, that is the language that is in our current agree-  
18 ment. ~~Under operation of our current agreement, we found~~  
19 ~~that causes us to be left holding the bag when BellSouth~~  
20 ~~is negligent.~~

21 Q And the Alltel language that you included in the direct  
22 testimony or attached to your direct testimony, is that  
23 from an interconnection agreement that any of the Joint  
24 Petitioners is a party to?

25 A NewSouth Communications and NuVox acquired by agreement

1 last May 21, NewSouth is also headquartered in Greenville,  
2 South Carolina, operates here. So, by operation of that  
3 contract, it is now a contract of NuVox.

4 Q Are you aware of any other commission that has approved  
5 language similar to what is being proposed by the Joint  
6 Petitioners?

7 A We're still in the arbitration process. I do not believe  
8 that any of the commissions have ruled on this issue yet.

9 Q Outside of these pending, are you aware?

10 A I'm not aware of any situations.

11 Q Is BellSouth not required to pay penalties to CLECs, such as  
12 the Joint Petitioners, if it doesn't meet certain performance  
13 criteria under the IPPs approved by this Commission?

14 A Are you speaking of SEEMs penalties?

15 Q Yes, that's part of the Performance Plan, I think, that  
16 was approved in the 271 case.

17 A You're correct. There was an agreement in the 271 process.  
18 BellSouth agreed to certain, or was required to meet certain  
19 standards in performing services for CLECs. That's an  
20 aggregate situation. In other words, if BellSouth doesn't  
21 meet the standards that were put upon them in exchange for  
22 getting the ability to provide long distance, then there  
23 are penalties that they pay in an aggregate fashion to  
24 specific CLECs. That does not, however, address specific  
25 instances of BellSouth negligence that harm particular

1 and specific CLECs.

2 With regard to the SEEM penalties, in exchange for  
3 agreeing to those performance criteria, if BellSouth meets the  
4 performance criteria, they don't pay any penalties. If they  
5 fail to meet the performance criteria that they agreed to  
6 in exchange for 271 approval, then they pay performance  
7 criteria. To get into long distance, which is a billion  
8 dollar a year industry for BellSouth, they have 45% market  
9 share, that'll be for each customer they have, they get  
10 \$17.00 per month in revenue; yes, they're required to meet  
11 certain performance criteria. If they fail to meet those,  
12 they pay SEEM penalties.

13 Q Could you just go back through your example? I just want  
14 to be clear on when the Joint Petitioners envision that  
15 this, if approved, when this provision would kick in and  
16 be used?

17 A This provision would only come into play in an instance where  
18 BellSouth is negligent in performing a service that a CLEC  
19 pays for, and the CLEC has to come out of pocket damages,  
20 has to pay money, essentially because of a BellSouth act  
21 of negligence. A real world example — four or five years  
22 ago, in South Carolina a BellSouth truck ran into our  
23 customer's premises. That's purely an act of BellSouth  
24 negligence. NuVox had nothing to do with driving that truck.  
25 In that instance, BellSouth should be liable to NuVox for

1 ~~a truck roll where they run into the customer's premises.~~  
2 ~~What's a service credit in that instance? I don't know what~~  
3 ~~it is. That's all we're asking for. So, in my example, a~~  
4 ~~truck runs into the customer's premises, and NuVox is held~~  
5 ~~responsible by the customer, with BellSouth acting as its~~  
6 ~~agent, to that customer for damages, if in the day that that~~  
7 ~~incident occurred, BellSouth had billed NuVox \$1 million;~~  
8 ~~7.5% of that amount would be \$75,000; that would be the~~  
9 ~~amount available to NuVox in the event that it was held liable~~  
10 ~~and responsible for those damages.~~

11 Q Under this proposed language, would it be a flat 7.5%?  
12 What if the damages were not that great?

13 A If the damages were \$1000, NuVox wouldn't be entitled to  
14 recover \$75,000. NuVox would only be entitled to recover  
15 \$1000.

16 Q Thank you.

17 A Sure.

18 MS. BELSER: Thank you, Mr. Chairman.

19 CHAIRMAN MITCHELL: Thank you.

20 **EXAMINATION BY CHAIRMAN MITCHELL:**

21 Q I have one question. You had made a remark there earlier  
22 about who was liable. Who would decide who is liable under  
23 your explanation there, Mr. Russell? It seems as though we  
24 can agree on a lot of issues here, and I'm sure that would  
25 be one that would be very debatable. Under your explanation,

1 who would decide who is liable?

2 A In our past experience, hopefully, the parties could say,  
3 'Look, this incident occurred. we believe you-all are at  
4 fault. We believe that we should be able to recover this  
5 amount that we're responsible to the customer for.' If we  
6 couldn't agree, if BellSouth and NuVox couldn't agree if  
7 the BellSouth act of negligence, if they were responsible  
8 for that act, in my opinion, it would have to be adjudicated  
9 in court. That is, NuVox would have to be responsible for  
10 those damages related to BellSouth act by a judge deciding  
11 that or a mediator deciding that. It would have to be a  
12 decision that requires NuVox to come out of pocket related  
13 to that act.

14 Q Fine. Thank you.

15 CHAIRMAN MITCHELL: Do we have any other  
16 questions? Commissioner Wright.

17 **EXAMINATION BY COMMISSIONER WRIGHT:**

18 Q Good afternoon, Mr. Russell.

19 A Good afternoon.

20 Q The truck roll example that you just talked about, is that  
21 negligence or is that an accident? And I guess the reason  
22 I'm asking you that is that I was going to ask you what your  
23 definition of negligence was or gross negligence or even  
24 willful misconduct, as y'all stated in here. The example you  
25 give, to me in my mind, goes more toward an accident and I

1 question whether it's negligence or not. I'd like to just  
2 hear if you could expand a little bit more. I understand  
3 possibly withholding service or refusing to do something  
4 that could be determined to be something, willful misconduct  
5 or whatever. But, can you maybe explain a little bit more,  
6 give a little bit more detail, give me some other examples?

7 A In my opinion, in the event of a truck roll incident, that  
8 would be an act of negligence, unless the building was  
9 rolling — I'm kidding. It would be an act of negligence.  
10 Willful misconduct would be a situation where a technician,  
11 out of some sort of willful act — *I am turning down the*  
12 *circuits to this building on purpose* — everybody hopes  
13 something like that would never occur. But, negligence  
14 would be an act where a reasonable person or a thoughtful  
15 person would not have committed it. That would be my opinion.

16 Q Okay.

17 A In the exercise of due care, it would not have happened.

18 CHAIRMAN MITCHELL: Commissioner Howard.

19 **EXAMINATION BY COMMISSIONER HOWARD:**

20 Q Mr. Russell, how do you arrive at 7.5%? What is the logic  
21 behind that figure?

22 A Under our current agreement, there's no figure. We started  
23 negotiating this contract, I believe, in 2003. In negotiating,  
24 we get a BellSouth template agreement that has our standard

1 terms and conditions. We take that and redline it and put  
2 our alternative language in. We looked at agreements that  
3 we had with other service providers, software companies,  
4 companies that provide us maintenance services, if you will,  
5 and compared what those service providers were willing to  
6 be responsible for in the event of their own negligence.  
7 We found agreements that had 30% of —quote/unquote— price  
8 of the contract would be available, instances where 50% of  
9 the price of the contract would be available.

10 Our original proposal to BellSouth, most likely, I  
11 believe, if I recall correctly, was higher than that. We  
12 settled on 7.5% as an incremental change from the position  
13 now where it's a bill credit issue. It was in comparison  
14 with other agreements, but moving slowly away from the bill  
15 credit situation that we have in our current agreement.

16 Q Okay.

17 CHAIRMAN MITCHELL: Any other questions?

18 Yes, sir, if you would.

19 **CROSS EXAMINATION BY MR. MEZA:**

20 Q Good afternoon, Mr. Russell.

21 A Good afternoon.

22 Q I believe in response to a question from ORS counsel, you  
23 stated that this language is reciprocal, is that correct?

24 A That's correct.

25 Q And you would agree with me that under the current billing



1 arrangement between the parties, NuVox's billings to Bell-  
2 South average about \$1000 a month?

3 A I believe that's true.

4 Q And BellSouth's billings to NuVox average between \$3 million  
5 to \$3.5 million a month?

6 A That's correct.

7 Q So, based upon the percentage that you are proposing this  
8 Commission adopt, wouldn't you agree with me, sir, that  
9 based upon the current billings of the parties, if they  
10 remain constant, after three years, BellSouth's liability  
11 to NuVox will be capped at approximately \$8.1 million while  
12 NuVox's liability to BellSouth will be capped at \$2700?

13 A That's capped potential liability. If that's 7.5% of the  
14 amounts billed over the term of the agreement, that's correct.  
15 In relation to that, NuVox would have paid BellSouth  
16 \$36 million over the course of the agreement. BellSouth  
17 would have paid NuVox for services \$36,000.

18 Q So, if BellSouth did something, a negligent act that caused  
19 NuVox to sustain \$10 million in damages, under your proposal,  
20 you would be allowed to get up to \$8.1 million, correct?

21 A If the incident occurred on the last day of the contract  
22 and NuVox was held liable to some party or parties to the  
23 tune of \$10 million, NuVox could make a claim against Bell-  
24 South for \$8.1 million, that's correct.

25 Q And if NuVox caused BellSouth harm at the same expiration

1 of time and the amount of harm that NuVox caused BellSouth  
2 to sustain was \$10 million, BellSouth could only recover  
3 \$2700 if this Commission approves your language, correct?

4 A That's correct based on the amount that NuVox would have  
5 billed BellSouth, for \$36,000, that's correct.

6 Q I have no further questions. Thank you.

7 CHAIRMAN MITCHELL: Yes, sir. Mr.  
8 Heitmann?

9 MR. HEITMANN: Thank you, Mr. Chairman.

10 **REDIRECT EXAMINATION BY MR. HEITMANN:**

11 Q Mr. Russell, do you recall questioning from the Chairman as  
12 to who would decide whether or not BellSouth was negligent  
13 in a particular instance?

14 A Yes.

15 Q Can you explain all the possible venues in which that decision  
16 could be made under this Interconnection Agreement?

17 A Under this Interconnection Agreement the parties are  
18 negotiating today, it could be made before this Commission.  
19 BellSouth's position is that only in limited circumstances  
20 can the parties go to court. So, this Commission would —  
21 if the parties couldn't agree that BellSouth was responsible  
22 for some damage incurred by the CLEC, this Commission would  
23 decide that issue.

24 Q Mr. Russell, in response to questioning from Commissioner  
25 Wright, do you recall discussing the standards of negligence,

1 gross negligence, and willful misconduct?

2 A Yes.

3 Q Can you explain what standards actually would be incorporated  
4 into the contract to make those determinations as to if  
5 someone was engaged in an accident, whether they were  
6 negligent in that particular instance?

7 A ~~Our position is that the contract incorporates applicable~~  
8 ~~law at the date of contracting, which is black letter law,~~  
9 ~~it's consistent with Georgia law, it is in fact consistent~~  
10 ~~with South Carolina law, that the negligent standards would,~~  
11 ~~in fact, be the negligent standards established in the area~~  
12 ~~where the negligent act occurred.~~

13 Q Mr. Russell, do you recall questioning from Mr. Meza in  
14 which he explained that BellSouth's liability under the  
15 Joint Petitioners' proposal would be capped at \$8.1 million?

16 A Yes.

17 Q Can you explain for us how much BellSouth would have received  
18 in revenue from NuVox if its liability was capped at  
19 \$8.1 million?

20 A Just for the services that we purchase under this Inter-  
21 connection Agreement, over that three year period, BellSouth  
22 would have received between \$36 and \$45 million.

23 Q Mr. Russell, if BellSouth's liability was capped at  
24 \$8.1 million [INAUDIBLE]—

25 A The term of the agreement, it'd be four years, it would be

1       \$36 million to \$45 million a year, so it could be \$100  
2       million and some odd dollars over the full course of the  
3       Agreement. I'm sorry, I was thinking in one-year terms.

4   Q   Thank you. Mr. Russell, if under, sticking with Mr. Meza's  
5       hypothetical where BellSouth's liability is capped at  
6       \$8.1 million, can you explain who would have to be  
7       responsible for the damages that exceeded \$8.1 million?

8   A   In the event that, in Mr. Meza's instance, if NuVox were  
9       held responsible under a theory liability for the acts of  
10      BellSouth to some party or parties for \$10 million and if  
11      you approved the language that we are requesting, we could  
12      recover against BellSouth \$8.1 million based on the  
13      \$120 million, \$130 million we would pay to BellSouth over  
14      the four years of this Agreement. NuVox would still be  
15      liable for the additional \$1.9 million that we may be held  
16      responsible for in Mr. Meza's example.

17   Q   And Mr. Russell, can you explain for us, in Mr. Meza's  
18       hypothetical, is it your understanding that BellSouth is  
19       solely negligent in that hypothetical?

20   A   My understanding from Mr. Meza's example is that that's an  
21       act of BellSouth negligence, unrelated to anything that  
22       NuVox has done, and we're still on the hook for \$1.9 million  
23       in addition to the amount we could recover from BellSouth  
24       based on their negligence.

25   Q   I have nothing further on this particular issue.

1 CHAIRMAN MITCHELL: Thank you, sir.

2 Now, we'll turn to BellSouth.

3 MR. MEZA: Ms. Blake will be handling  
4 Issue 4 for BellSouth.

5 CHAIRMAN MITCHELL: Thank you, sir.

6 **SUMMARY BY MS. BLAKE:**

7 Thank you. BellSouth's proposed language limiting each  
8 party's liability to bill credits is the standard in the  
9 industry and is consistent with BellSouth and the Joint  
10 Petitioners' retail tariffs in South Carolina. The Joint  
11 Petitioners' proposal of 7.5% of amounts paid or payable  
12 on the day the claim arose is a total deviation from this  
13 industry standard and has never been included in any other  
14 interconnection agreement and results in uneven treatment  
15 between BellSouth and the Joint Petitioners.

16 Specifically, as was discussed, adoption of the Joint  
17 Petitioners' proposal means that after three years, BellSouth's  
18 liability is capped at \$8.1 million, while NuVox's liability  
19 is capped at \$2700.

20 As Mr. Russell indicated, or mentioned, the Alltel/  
21 NewSouth tariff or contract, that contract is not apples-  
22 to-apples with BellSouth's Agreement that we're arbitrating  
23 here. Alltel does not have 251(c) obligations to provide  
24 UNEs at TELRIC rates. They can choose not to increase their  
25 prices in order to cover that increased liability that

1 Q Thank you.

2 MR. HEITMANN: Mr. Chairman, I have  
3 nothing further for this particular issue.

4 CHAIRMAN MITCHELL: Thank you. Mr. Meza?

5 MR. MEZA: I have no redirect, sir.

6 CHAIRMAN MITCHELL: Thank you very  
7 much. We'll go ahead and get started with  
8 the next issue. Mr. Pringle.

9 MR. PRINGLE: The next one is Issue No.5,  
10 and Mr. Russell will handle that one as well.

11 CHAIRMAN MITCHELL: Thank you.

12 ISSUE NO. 5

13 SUMMARY BY MR. RUSSELL:

14 ~~Issue No. 5 relates to the dispute is whether the CLECs~~  
15 ~~have to include~~ language in its Customer Service Agreements  
16 or tariffs that mirrors BellSouth's limitation of liability  
17 language in its tariffs; and if the CLEC fails to do so,  
18 ~~should the CLEC be liable to BellSouth?~~

19 What we're talking about here is a competitive issue.  
20 We compete with BellSouth. You compete for customers on a  
21 number of different issues — price, whether or not you're  
22 going to require a deposit, other terms including your  
23 liability limitation language. ~~The language that BellSouth~~  
24 ~~proposes~~ in Issue 5, if in competing for a customer, a CLEC  
25 ~~decides to give better liability limitation, a more favorable~~

1 ~~liability limitation to a customer that it's competing~~  
2 for with BellSouth or with Xspedius or another customer,  
3 and BellSouth has any liability for its own negligence in  
4 providing the underlying service to the CLEC for that  
5 customer, that the CLEC will then pay for BellSouth's acts  
6 or omissions that cause damage.

7 Let's take for example, universities — this Commission,  
8 any county or local government, in bidding for service, you  
9 oftentimes fill out an RSP, those Requests for Proposal  
10 often time require you to meet specific conditions for bidding  
11 on that service. Sometimes it requires liability of  
12 limitations to be changed from what's in your tariff. If  
13 BellSouth's bidding on that customer and makes changes to  
14 liability limitations that differ from its tariffs and  
15 CLECs can't do that, we can't bid for those customers.

16 That's what BellSouth's trying to get you-all to approve  
17 with this section. A CLEC, if you bid on the RSPs, if you  
18 bid against us for customers, you change your liability  
19 limitation different from our tariff, even if we change  
20 it different from our tariff and you're trying to bid for  
21 that business, and we're held liable if there are any damages  
22 related to our service to you, where we make a mistake,  
23 Bellsouth, we make a mistake, you're going to be liable for  
24 that. It's a competitive issue. It's a fairness issue. All  
25 ~~we want to do is to be able to bid for customers, be able~~

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1 ~~to negotiate for customers just like BellSouth does. Bell-~~  
2 South used to come to you with Contract Service Agreements  
3 that you would approve. It changed the terms from their  
4 ~~standard tariff offering.~~

5 CHAIRMAN MITCHELL: Excuse me, Mr.

6 Turner has risen. Mr. Turner?

7 MR. TURNER: Mr. Chairman, I'm sorry.

8 I've stayed in my seat the first time, and  
9 I've stayed in my seat a long time after  
10 the buzzer went the second time. We're  
11 going substantially over two minutes, and  
12 we're trying our best to get through for a  
13 day. So, I would ask that the Commission  
14 admonish Mr. Russell to keep the time limit  
15 in mind, please.

16 CHAIRMAN MITCHELL: Thank you. Mr.

17 Pratt, if you will ring the bell for us. We  
18 will allow you just a moment to conclude,  
19 Mr. Russell.

20 A ~~[Mr. Russell] To conclude, this is a fairness issue. We~~  
21 want to be able to ~~not have to mirror BellSouth's tariff~~  
22 requirements when BellSouth is not held to some similar  
23 ~~standard.~~

24 CHAIRMAN MITCHELL: Thank you. I guess,

25 Mr. Pratt, if you'll just sort of raise



1 your hand also so we'll make sure.

2 Ms. Belser?

3 MS. BELSER: Thank you, Mr. Chairman.

4 **CROSS EXAMINATION BY MS. BELSER:**

5 Q Mr. Russell, is this issue somehow related with Issue 4—  
6 and the reason I ask that is, if the CLEC is able to have  
7 different liability language in its interconnection agree-  
8 ment and a claim from an end-user arises, would the CLEC  
9 then be able to go back against BellSouth under the language  
10 from Issue 4 for damages to resolve that claim if the claim  
11 is found adverse to the CLEC?

12 A ~~Only if the underlying act that caused the damage was caused~~  
13 ~~by BellSouth — if it's directly related to a BellSouth~~  
14 ~~act and was reasonably foreseeable. In other words, if it~~  
15 ~~was a CLEC issue — if the CLEC negotiated different terms~~  
16 ~~than it has in its tariff, because that's how we deal with~~  
17 ~~customers. We do Contract Service Arrangements. Ninety-nine~~  
18 percent of our customers have customer specific contracts.  
19 If the CLEC is at fault for that, then the CLEC will come  
20 out of pocket for those damages. But, potentially it is  
21 related to Section 4, yes, it could be.

22 Q And currently, under limitation of liability language that  
23 is speaking very generally here, but that is found in,  
24 let's say, in most ILEC tariffs, that language would be to

1 limit any recovery to whatever the customer paid for the  
2 service. Is that correct?

3 A That's correct, yes.

4 Q And yet, is it your testimony and your position that the  
5 CLECs, in order to gain customers, may want to waive this  
6 liability limitation in order to gain a customer?

7 A It's not necessarily a waiver of liability limitations. You  
8 always want to have some threshold liability in case, for  
9 instance, a perfect example is the military base scenario,  
10 where you fill out a RFP and those governmental agencies  
11 require different liability limitations than are in the  
12 tariffs. Sometimes, we'll agree to simply say, okay, all  
13 we're going to be able to get is the cost of the underlying  
14 service on a bill credit. They may negotiate for if we're  
15 out of service for 24 hours, we get our next month of  
16 service credited as opposed to just a credit for that 24  
17 hour service outage. It's being able to meet competitors'  
18 offerings where they're willing to change liability  
19 limitations along with competitive offerings on waiver of  
20 deposit or price or other terms.

21 Q Under that situation, let's use that example you just gave.  
22 If it's in the agreement that if the base is without service  
23 for 24 hours, that there would be a waiver of some payment  
24 due on the next bill; is that dependent upon whose error  
25 it is — if it was the CLEC's fault or BellSouth's fault,

1 or if it's a resale or interconnection situation?

2 A Absolutely. Let's take the example where a CLEC sends a  
3 technician out to the customer premises, and the CLEC  
4 technician makes an error, and because of that error the  
5 base's service is out for 24 hours; and the CLEC has  
6 agreed, by winning that contract, to give a service credit  
7 in excess of the usual tariff amount. If CLEC is at fault,  
8 CLEC gives the credit. There's nothing that we would ever  
9 claim for BellSouth if the CLEC's at fault.

10 Q This is a business decision on behalf of the CLEC to impose  
11 some language that may lessen the liability that the CLEC,  
12 liability limitation that the CLEC is putting in its contracts,  
13 is it not?

14 A It is, yes.

15 Q And who should be responsible for that business decision  
16 if a claim comes back for a problem with the service?

17 A If the claim comes back as a problem for the service caused  
18 by the CLEC, the CLEC would be responsible for that error.

19 ~~Our position is, however, if the error is related to Bell-~~  
20 ~~South's negligence in providing the service that we are~~  
21 ~~paying them for, that BellSouth should be responsible for~~  
22 ~~that negligence to the tune of 7.5% of the amounts billed~~  
23 ~~at the time of the error.~~

24 Q Now, if BellSouth was providing service to that same customer,  
25 let's use the military base example, and service went out

1 the 24 hours, their limitation of liability that's contained  
2 in their tariffs would restrict them to liability for  
3 whatever amounts paid, is that correct?

4 A If the terms of service that BellSouth and the customer  
5 agreed to required only bill credits for service outage,  
6 that's correct. If, however, it's sometimes the case with  
7 CSAs that have different terms, they could have agreed to  
8 a different liability limitation scenario.

9 Q Okay. Thank you, Mr. Russell.

10 MS. BELSER: Thank you, Mr. Chairman.

11 CHAIRMAN MITCHELL: Thank you.

12 Commissioners? Commissioner Clyburn.

13 **EXAMINATION BY COMMISSIONER CLYBURN:**

14 Q Mr. Russell, let me get clarification. The example you  
15 gave is, again, it's a CSA, it's a special arrangement between  
16 the provider and the customer.

17 A That's correct.

18 Q So, my issue with the scenario is, in this example, you won  
19 the RFP, so your pot was sweeter, I'm assuming, or you met  
20 whatever the — you bid for whatever the parameters that,  
21 say, Shaw Air Force Base set forth.

22 A The parameters are set out in the RFP, that's correct.

23 Q So, you won that bid and maybe BellSouth in this instance  
24 came in second.

25 A Maybe, yes.

1 Q So, again, if there were a hiccup and service was not  
2 provided, you're saying that whatever that the parameters  
3 set forth in that RFP, whatever the penalty is as set forth  
4 in that RFP, if it were a month of service, then BellSouth  
5 should pay for that, plus 7.5%?

6 A ~~No, not pay for that plus 7.5%, no. If it were related to~~  
7 ~~a BellSouth act, a BellSouth act and we gave a credit, then~~  
8 ~~we would be able to recover based on the BellSouth negligence~~  
9 ~~up to the cost of that month of service that we'd credited~~  
10 ~~and recovered, but not plus 7.5%, just that credit.~~

11 Q Okay, just that.

12 A Just that credit. Let's say the cost is \$1000 a month, we'd  
13 be able to recover \$1000.

14 Q Okay. Again, and I'll ask BellSouth their account of  
15 things.

16 CHAIRMAN MITCHELL: Any other questions,  
17 Commissioners?

18 [No Response]

19 CHAIRMAN MITCHELL: Mr. Mustian?

20 MR. MUSTIAN: Nothing.

21 CHAIRMAN MITCHELL: Mr. Meza.

22 CROSS EXAMINATION BY MR. MEZA:

23 Q Mr. Russell, I believe you said that this a competitive  
24 issue, is that right?

25 A It is. In part, yes.

- 1 Q I believe you said it's a competitive issue twice, is that  
2 right?
- 3 A In part, twice.
- 4 Q But now it's an in-part competitive issue?
- 5 A That's part of the issue, it's a competitive issue.
- 6 Q This provision, this identical provision that we are  
7 arbitrating is in NuVox's current Agreement, correct?
- 8 A In our Interconnection Agreement?
- 9 Q Yes.
- 10 A That's correct, yes.
- 11 Q And there has never been a dispute between NuVox and  
12 BellSouth over its interpretation or implementation, has  
13 there?
- 14 A I don't believe so.
- 15 Q NuVox has been in existence since 1997?
- 16 A NuVox's predecessors, yes.
- 17 Q Has NewSouth or NuVox been competing with BellSouth since  
18 1997?
- 19 A Yes.
- 20 Q Now, NuVox files a new tariff in February of this year,  
21 correct?
- 22 A I believe so, yes.
- 23 Q And in your tariff filing, you limited your liability to  
24 your end-users to bill credits, correct?
- 25 A I believe so, yes. Again, the tariff — we sell 99% of our

1 services out of Customer Service Agreements. We do have a  
2 tariff on file with this Commission that I believe limits  
3 liability to bill credits.

4 Q Does NuVox file tariff filings that are inconsequential,  
5 that don't apply?

6 A No, we file tariff filings that are approved by the Commission  
7 and continue to meet their requirements.

8 Q Thank you.

9 CHAIRMAN MITCHELL: Thank you, sir. Mr.  
10 Heitmann?

11 MR. HEITMANN: Thank you, Mr. Chairman.

12 **REDIRECT EXAMINATION BY MR. HEITMANN:**

13 Q Mr. Russell, do you recall questioning from ORS counsel with  
14 regard to who should be responsible for business decisions  
15 made by the particular parties?

16 A Yes.

17 Q Mr. Russell, can you explain whether a CLEC in its Customer  
18 Service Agreements can somehow limit BellSouth's liability  
19 for negligence?

20 A I don't believe that we can limit their liability to a  
21 customer. That's my understanding.

22 Q And can you explain why the Joint Petitioners are making  
23 a business decision not to accept in all instances  
24 liability caused by BellSouth?

25 A ~~That's why we're negotiating that issue and have brought.~~

1 ~~these issues before you because we don't feel that it is~~  
2 ~~fair when we're paying for a service to be stuck with~~  
3 ~~liability that's based on a BellSouth act as opposed to a~~  
4 ~~NuVox act.~~

5 MR. HEITMANN: Mr. Chairman, I have  
6 nothing more on this particular issue.

7 CHAIRMAN MITCHELL: Thank you, sir.  
8 Now, we'll go to Mr. Meza again.

9 MR. MEZA: Yes, sir. Thank you. Ms.  
10 Blake will be representing BellSouth on  
11 Issue 5.

12 CHAIRMAN MITCHELL: Ms. Blake, please.

13 **SUMMARY BY MS. BLAKE:**

14 Thank you. If the Joint Petitioners make a business decision  
15 not to limit their liability in their tariffs and contracts,  
16 consistent with industry standards, that is their own  
17 business decision. And the Joint Petitioners, not BellSouth,  
18 should bear the risk resulting from that decision. Simply  
19 put, because of the Joint Petitioners' end-users do not  
20 purchase services out of BellSouth's tariffs. The Joint  
21 Petitioners' end-users do not enter into a contract with  
22 BellSouth. The intent of this provision is to put BellSouth  
23 in the same position it would be in if a Joint Petitioner  
24 end-user was a BellSouth end-user.

25 CHAIRMAN MITCHELL: Thank you. Ms.



1 CHAIRMAN MITCHELL: I'm going to call  
2 the hearing back to order and after the  
3 delay, do we have any other problems that  
4 have been resolved, Mr. Pringle?

5 MR. PRINGLE: Do you mean, have we been  
6 negotiating?

7 CHAIRMAN MITCHELL: Yes.

8 MR. PRINGLE: I'm unhappy to report that  
9 we haven't resolved any unresolved issues at  
10 this point.

11 CHAIRMAN MITCHELL: Okay, we'll get  
12 started back. We're going to Issue 6, I  
13 believe. So, we'd ask the presenter.

14 MR. PRINGLE: That's going to be Mr.  
15 Russell.

16 CHAIRMAN MITCHELL: Okay, Mr. Russell.

17 ISSUE NO. 6

18 SUMMARY BY MR. RUSSELL:

19 ~~Issue 6 is about the parties' understanding with regard~~  
20 ~~to indirect, consequential and — The parties agreed that~~  
21 ~~neither party will be liable for indirect, incidental or~~  
22 ~~consequential damages. The language that the Joint Petitioners,~~  
23 ~~the CLECs, have proposed makes the distinction that damages~~  
24 ~~that are directly related to an act of one of the parties~~  
25 ~~and reasonably foreseeable, if related to that act, would~~

1 ~~not be considered indirect, consequential or incidental~~  
2 damages.

3 ~~That's the summary of the issue.~~

4 CHAIRMAN MITCHELL: Thank you, sir. Ms.  
5 Belser?

6 MS. BELSER: No questions, Mr. Chairman.

7 CHAIRMAN MITCHELL: Commissioners?

8 [No Response]

9 CHAIRMAN MITCHELL: Mr. Meza?

10 MR. MEZA: No questions, sir.

11 CHAIRMAN MITCHELL: Mr. Heitmann?

12 MR. HEITMANN: No questions, sir.

13 CHAIRMAN MITCHELL: You did an  
14 excellent job on that one.

15 MR. HEITMANN: We had a talk over lunch.

16 [Laughter]

17 CHAIRMAN MITCHELL: We'll go to  
18 BellSouth at this time.

19 MR. MEZA: BellSouth presents Kathy  
20 Blake to present our position on Issue 6.

21 CHAIRMAN MITCHELL: Okay, Ms. Blake.

22 **SUMMARY BY MS. BLAKE:**

23 Thank you. The Joint Petitioners with their language want  
24 to preserve certain claims their end-users may have against  
25 BellSouth; however, their end-users are not parties to this

1 Agreement. So, neither BellSouth nor the Joint Petitioners  
2 can impact the rights of their end-users by this Agreement.  
3 Thus, the Joint Petitioners' language is ineffective and  
4 unnecessary. The Commission should also reject the Joint  
5 Petitioners' language because it further negates the already  
6 agreed upon concept of having some limit of liability for  
7 claims of negligence.

8 Thank you.

9 CHAIRMAN MITCHELL: Thank you. Ms.

10 Belser?

11 MS. BELSER: No questions, Mr. Chairman.

12 CHAIRMAN MITCHELL: Commissioners?

13 [No Response]

14 CHAIRMAN MITCHELL: Mr. Heitmann?

15 MR. HEITMANN: No questions.

16 CHAIRMAN MITCHELL: Mr. Meza?

17 MR. MEZA: No redirect, sir.

18 CHAIRMAN MITCHELL: Thank you.

19 We'll move forward to the next one.

20 This will be 7.

21 MR. PRINGLE: Issue No. 7 will also be

22 Mr. Russell.

23 ISSUE NO. 7

24 SUMMARY BY MR. RUSSELL:

25 ~~Issue 7 is pretty much related to the indemnification~~

1 ~~responsibilities of the parties. This is incredibly~~  
2 important to the Joint Petitioners. The Joint Petitioners  
3 have proposed language that provides that the party providing  
4 services will indemnify the party receiving and paying for  
5 services for damages related to the providing party's  
6 negligence. It is reciprocal. It applies to both parties  
7 the same way.

8 Imagine a situation where you hire a plumber at your  
9 house. The plumber comes to your house to provide a service  
10 to you, but the plumber does so in a grossly negligent  
11 fashion. In what event are you obligated to insure the  
12 damages that that plumber who provided the services to  
13 you? That's what this issue is about. We're purchasing  
14 services from BellSouth. If BellSouth does something to  
15 cause damages directly to us, we should be able to look  
16 to BellSouth to indemnify us for the claims related to their  
17 negligence.

18 Likewise, on the other side of the equation, in receiving  
19 services from BellSouth or when BellSouth receives services  
20 from us, if the recipient of those services uses those  
21 services in a fashion that causes an invasion of privacy or  
22 some other act that the recipient causes in receiving those  
23 services, we will be liable to BellSouth for that. This  
24 indemnification obligation is standard. Service providers  
25 ~~indemnify the people paying for the service when the service~~

1 provider causes harm to the paying party. If we, in receiving  
2 the services, use those services in some fashion that forces  
3 liability on BellSouth because of a specific instance of  
4 misconduct, we will indemnify BellSouth. This is a reciprocal  
5 provision.

6 That sums up Issue No. 7.

7 CHAIRMAN MITCHELL: Okay. Thank you,  
8 sir. Ms. Belser?

9 MS. BELSER: No questions, Mr. Chairman.

10 CHAIRMAN MITCHELL: Commissioners?

11 [No Response]

12 CHAIRMAN MITCHELL: Mr. Heitmann?

13 Excuse me, Mr. Meza?

14 MR. MEZA: No questions, sir.

15 CHAIRMAN MITCHELL: Thank you, sir. Mr.  
16 Heitmann?

17 MR. HEITMANN: No questions, sir.

18 CHAIRMAN MITCHELL: Okay. Let's go to  
19 Ms. Blake, I assume.

20 MR. MEZA: Yes, Ms. Blake will be  
21 doing this issue. Thank you.

22 SUMMARY BY MS. BLAKE:

23 Thank you. The Commission should reject the Joint  
24 Petitioners' indemnification language because it is totally  
25 one-sided in favor of the Joint Petitioners. Specifically,

1 copyright and those types of things was addressed in a  
2 previous arbitration, Issue No. 8, but it's since been  
3 resolved and that is a section within the General Terms  
4 and Condition of the Agreement.

5 Q Thank you, ma'am.

6 MS. BELSER: Thank you, Mr. Chairman.

7 CHAIRMAN MITCHELL: Thank you.

8 Commissioners?

9 [No Response]

10 CHAIRMAN MITCHELL: Mr. Meza? Excuse  
11 me, Mr. Heitmann, I'm sorry.

12 MR. HEITMANN: I have no questions.

13 CHAIRMAN MITCHELL: Mr. Meza?

14 MR. MEZA: No redirect, sir.

15 CHAIRMAN MITCHELL: Thank you, sir. We'll  
16 go to Mr. Pringle.

17 MR. PRINGLE: Issue No. 12, I believe,  
18 is Mr. Russell.

19 ISSUE NO. 12

20 SUMMARY BY MR. RUSSELL:

21 ~~Issue 12 surrounds how to address applicable law in this~~  
22 ~~Agreement. The parties have already agreed that Georgia~~  
23 ~~Contract Law will govern the interpretation of the contract~~  
24 ~~throughout the region. This was something BellSouth requires~~  
25 ~~in its template agreement, and it's something the Joint~~

1 ~~Petitioners agreed to some time ago.~~ BellSouth's position  
2 is that unless we specifically included something in the  
3 body of this Agreement, it does not apply to this Agreement.  
4 Georgia law provides that, unless the parties specifically  
5 agree to do something different, then applicable law applies  
6 to the agreement.

7 That having been said, in, for example, the Triennial  
8 Review Order, 700 pages long, if you take BellSouth's  
9 interpretation of this issue, the Triennial Review Order does  
10 not apply to this Agreement. If you take the Joint Petitioners'  
11 position that applicable law at the time of contracting  
12 applies to an agreement, which it is the law of the State  
13 of Georgia, is consistent with South Carolina law, is  
14 Supreme Court law. At the time of contracting, applicable  
15 law, unless the parties specifically agree to do something  
16 different, applies to the agreement. It's a simple issue.  
17 It's one that we believe BellSouth, in turning that legal  
18 principle on its head and saying unless you specifically  
19 put something in the agreement, it doesn't apply to the  
20 relationship of the parties. What we're wondering is what  
21 they're trying to get out of. What legal requirements are  
22 they trying to get out of by changing this black letter law  
23 principle, one that has governed the parties' relationship  
24 in two previous interconnection agreements.

25 That's the issue in Item No. 12.

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1 CHAIRMAN MITCHELL: Thank you, sir. Ms.

2 Belser?

3 MS. BELSER: Thank you, Mr. Chairman.

4 **CROSS EXAMINATION BY MS. BELSER:**

5 Q Mr. Russell, the parties are agreeing that Georgia law  
6 would control this Interconnection Agreement. Is that  
7 correct?

8 A The interpretation of the contract, that's correct.

9 Q Any of the Joint Petitioners headquartered in Georgia?

10 A No, only, as I understand it, BellSouth is headquartered  
11 in Georgia.

12 Q Any of the Joint Petitioners organized as a Georgia  
13 corporation?

14 A I don't believe so.

15 Q Thank you.

16 MS. BELSER: No further questions.

17 CHAIRMAN MITCHELL: Thank you.

18 Commissioners?

19 [No Response]

20 CHAIRMAN MITCHELL: Mr. Meza?

21 MR. MEZA: No questions, sir.

22 CHAIRMAN MITCHELL: Mr. Heitmann?

23 MR. HEITMANN: No questions, Mr.

24 Chairman.

25 CHAIRMAN MITCHELL: Thank you, sir. We'll



1 Q Do you know when NuVox received that particular bill?

2 A I believe that bill was sent to NuVox on December 31. They  
3 received it January 1. They paid it on January 24, two days  
4 before the due date.

5 MR. CULPEPPER: No further  
6 questions.

7 CHAIRMAN MITCHELL: Thank you, sir. Yes,  
8 sir, Mr. Pringle, your next issue.

9 MR. PRINGLE: It's 100 and that would  
10 be Mr. Russell.

11 ISSUE NO. 100

12 SUMMARY BY MR. RUSSELL:

13 ~~Issue 100 is, should a CLEC be required to calculate and~~  
14 ~~pay amounts in addition to those specified in BellSouth's~~  
15 ~~notice of suspension or termination for nonpayment in order~~  
16 ~~for the CLEC and its customer base to avoid suspension or~~  
17 ~~termination.~~

18 This issue surrounds an instance where a CLEC receives  
19 a notice from BellSouth. It's usually a one-page letter  
20 and that letter says at the top something to the effect  
21 of,

22 Please be advised that unless payment of "x"  
23 amount is received by 15 days from the date of  
24 the letter, BellSouth reserves the right to  
25 suspend or terminate your access to services or  
26 terminate services to the CLEC.

27  
28 ~~NuVox sees 1100 of these bills per month, so we have 1100~~

1 ~~of billing account numbers. Every billing account number~~  
2 has its own bill, so there are 1100 of these. In the event  
3 that any bill has a past due amount, BellSouth automatically  
4 generates a late payment notice.

5 The problem with BellSouth's proposal is that in the  
6 event you receive a late payment notice and any other amounts  
7 that come due from the date of that letter that are past  
8 due and the date that you're supposed to pay the amount  
9 indicated in the notice, you also have to pay any of those  
10 other amounts that aren't explained in the bill or brought  
11 to your attention, in order to avoid suspension or  
12 termination.

13 A real world example, a month ago, NuVox bills \$3million  
14 to \$3.5 million per month, gets a notice that says,

15 Unless you pay \$65 related to this billing  
16 account number by 15 days from now, we could  
17 terminate your service related to all the other  
18 amounts that become past due during that time  
19 period.

20  
21 The issue being, that's .0002% of what we pay per month. We  
22 have, as BellSouth has testified in every state, a stellar  
23 payment history. Our issue is this, when BellSouth sends the  
24 CLECs a notice of termination or suspension for nonpayment,  
25 that amount due in the notice should be all that's due to  
26 avoid suspension or termination of our services and those  
27 to our end-users.

28 CHAIRMAN MITCHELL: Thank you, sir. Ms.

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1 Belser?

2 MS. BELSER: Thank you, Mr. Chairman.

3 **CROSS EXAMINATION BY MS. BELSER:**

4 Q Mr. Russell, under the example that you just gave, if the  
5 subsequent 1100 bills that NuVox gets from BellSouth, if  
6 the due date for those bills is before the time when that  
7 \$65 past due amount is to be paid, are all of those 1100  
8 bills due and payable on the same day as the \$65 past due  
9 amount?

10 A If they become past due from the date you receive the letter  
11 to the date that payment is supposed to be made, which is  
12 typically 15 days from the date of the letter, if those  
13 bills become past due during that time then all of them are  
14 due at the date the \$65 amount would be due.

15 Q How do you know that? How do you determine how much is due  
16 when that \$65 amount was due?

17 A ~~You would have to anticipate through, I guess, looking at~~  
18 ~~any bills, not only would you calculate what becomes past~~  
19 ~~due during that time, you also would have to calculate any~~  
20 ~~late payment charges, any interest charges that would--~~  
21 ~~the point of our proposal is, that's a very difficult process~~  
22 ~~to pin down to the penny exactly the amounts that would be~~  
23 ~~due on unrelated invoices that may become past due during~~  
24 ~~that time period.~~

25 The reason for that is this: when we receive a bill

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1 from BellSouth, like the one you just saw, we review those  
2 bills, we identify the charges that we're going to dispute  
3 with BellSouth, we file those disputes with BellSouth for  
4 one group, we make payment of the undisputed charges to  
5 another group. The dispute group recognizes disputes,  
6 acknowledges the disputes that they agree to. The payment  
7 group receives your payment and posts payment to an account  
8 that is typically not the day they receive the check, or  
9 if you send electronic funds, it could be. But, those two  
10 groups, the dispute group and the payment group, have to  
11 jibe up, if you will. They have to get all their numbers  
12 correct.

13 ~~So, there can even be miscalculations on BellSouth's~~  
14 ~~side. All we're asking for is that when BellSouth sends us~~  
15 ~~a notice saying, if you don't pay this amount, we will~~  
16 ~~terminate service. If we make payment for that amount, we~~  
17 ~~can take comfort in the fact that we're not going to get~~  
18 ~~our service suspended or terminated, and our customers~~  
19 ~~aren't going to get their payment suspended or terminated.~~  
20 ~~What we can't get into is the guessing game situation that~~  
21 ~~you're talking about, where we would get a notice and then~~  
22 ~~everything else during that time period that should come~~  
23 ~~past due, we have to be responsible for to the penny and~~  
24 ~~guess how BellSouth is posting payment and recognizing~~  
25 ~~disputes.~~

1 Q Thank you.

2 MS. BELSER: Thank you, Mr. Chairman.

3 CHAIRMAN MITCHELL: Thank you.

4 Commissioners? Commissioner Moseley.

5 **EXAMINATION BY COMMISSIONER MOSELEY:**

6 Q I hate to ask this question — I want to speed it up. But,  
7 the \$65, explain that to me again on the 100 accounts.

8 A Okay. We have 1100 accounts with BellSouth. In a typical  
9 month, NuVox bills between \$3 million and \$3.5 million in  
10 charges. Let's just use round numbers, 1000 billing account  
11 numbers, so 1000 bills and \$3 million; divide into \$3 million  
12 the 1000, and that's the average bill now.

13 ~~On this particular billing account number, let's say~~  
14 ~~it was billing account No. 1, we got a notice that said,~~

15 ~~On this account you still owe \$65. Unless you~~  
16 ~~pay the \$65 and anything else that comes due in~~  
17 ~~that 15 day time period, we're going to~~  
18 ~~terminate your service or suspend your access to~~  
19 ~~service.~~

20 ~~We contacted our account manager, went back, showed where~~  
21 ~~we had disputed or paid that amount and got that issue~~  
22 ~~resolved. But, as you-all can imagine, when you receive a~~  
23 ~~notice that says, unless you make payment of this amount,~~  
24 ~~whether it be \$65 or \$18,000, and you have to calculate~~  
25 ~~everything else, it's a Chinese fire drill, so that you don't~~  
26 ~~get access suspended for your customers and for you. It's~~  
27 ~~much cleaner to get notice, hey, our notice says we owe~~  
28

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1     ~~you \$65 or \$18,000, whatever it is, let's get this resolved,~~  
2     ~~here's a notice, we'll get this issue resolved, and let's~~  
3     ~~move forward.~~

4     Q     Out of the 1100 accounts, we'll play with the \$65, how many  
5           of those would have a \$65 late fee on them?

6     A     Oh, that wasn't a late fee. That was — I don't know what  
7           the fee was for. The only time we would get late payment  
8           charges would be if we failed to pay within that due date  
9           that's stamped on the bill and the date that's next due,  
10          and we've made a conscience decision, the company, NuVox,  
11          to devote an extraordinary amount of resources to paying  
12          those bills in about 22 days.

13    Q     Thank you.

14                                   CHAIRMAN MITCHELL: Mr. Culpepper?

15    CROSS EXAMINATION BY MR. CULPEPPER:

16    Q     Good afternoon, Mr. Russell. Do you recall Ms. Belser's  
17           questions about how a CLEC would determine additional amounts  
18           owed that must be paid?

19    A     Yes.

20    Q     Mr. Russell, have you reviewed BellSouth's response to  
21           Florida Staff Interrogatory 117?

22    A     Not recently.

23                                   MR. CULPEPPER: Mr. Chairman, I'd ask  
24                                   that we pass out BellSouth's response to  
25                                   Florida Public Service Commission Inter-

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1 rogatory 117. It is part of the record, and  
2 it's relevant to the question.

3 CHAIRMAN MITCHELL: Yes, sir.

4 MR. CULPEPPER: Mr. Chairman, this is  
5 exhibit 8 to Ms. Blake's rebuttal testimony.

6 Q [Mr. Culpepper] Mr. Russell, do you have a copy of the  
7 document?

8 A [Witness Is Furnished Document] Yes.

9 Q If you would, could you go to page 5 of 83? Go to the top  
10 right-hand corner.

11 A Right. I see it.

12 Q Mr. Russell, would you agree with me that page 5 of 83 here  
13 is a BellSouth suspension notice dated March 18, 2005,  
14 requesting payment by April 18, 2005, of an amount that is  
15 redacted? Would you agree with me?

16 A Yes.

17 Q Would you also agree that in the second paragraph, the  
18 suspension notice states that,

19 Also, payments are expected for any current  
20 bills that may become due.

21  
22 A That's correct.

23 Q Mr. Russell, would you go to page 7 of 83. Would you agree  
24 with me that this is a BellSouth FAX cover sheet which  
25 states, go towards the bottom:

26 The attached report lists all billing account  
27 numbers and outstanding unpaid balances.

- 1 Do you see that part?
- 2
- 3 A Yes, I do.
- 4 Q And I think you just testified NuVox has 1100 billing account
- 5 numbers?
- 6 A That's correct.
- 7 Q Let's turn the page and go to the next page of this same
- 8 exhibit, page 8. Do you recognize what this document is?
- 9 A [Examining] No.
- 10 Q Mr. Russell, would you agree with me that this is a BellSouth
- 11 Aging Report that BellSouth provides to CLECs along with
- 12 the suspension notices?
- 13 A It could be a BellSouth Aging Report, sure.
- 14 Q You don't know whether it is or isn't?
- 15 A It looks like an Aging Report.
- 16 Q Have you seen one before?
- 17 A I have seen one of these before, yes.
- 18 Q Other than the hearing room in Florida?
- 19 A Yes, I have.
- 20 Q Mr. Russell, would you agree with me that this Aging Report
- 21 is a spreadsheet that shows company name — would you agree
- 22 with me that the billing account numbers have been redacted,
- 23 and the spreadsheet goes on to show current amount due by
- 24 billing account number, past due amount by 30 days, 60 days
- 25 and 90 days and there's also a column that shows disputed



1 amounts. Would you agree with me that there's a final column  
2 that shows total less disputes and current charges; would  
3 you agree with me to that?

4 A Yes.

5 Q Let's go to page 18 of the same exhibit. Would you agree with  
6 me here that the last page for the Aging Report shows a  
7 total past due amount of \$231,000?

8 A Yes.

9 Q Let's look at the very next page. Would you agree with me  
10 here that the next page of this exhibit is an e-mail to  
11 BellSouth containing a notice of payments made during the  
12 week of 3/21/05?

13 A Yes.

14 Q Let's go to page 21 of 83. Would you agree with me here that  
15 this is yet another e-mail showing payments made to BellSouth  
16 for the week of 3/28/05?

17 A Yes.

18 Q Let's turn to page 24, the same exhibit. Would you agree  
19 with me that we're now up to Monday, April 4, 2005, and  
20 that BellSouth is providing another updated Aging Report?

21 A Yes.

22 Q Let's go to page 37, same exhibit. Would you agree with me,  
23 Mr. Russell, that here we have another e-mail with an  
24 attachment showing payments made to BellSouth during the  
25 week of April 4, 2005?

- 1 A Yes.
- 2 Q Let's go to page 45. Would you agree with me that on page  
3 45 of the same exhibit, BellSouth is providing yet another  
4 updated Aging Summary Report, showing amounts that must be  
5 paid on or before April 18, 2005?
- 6 A Yes.
- 7 Q Let's go, if you would, to page 56 of the same exhibit.  
8 Would you agree with me that this is the last page of the  
9 Aging Report, showing a total past due amount of \$165,000?
- 10 A It appears to be, yes.
- 11 Q The very next page, page 57, would you agree that's showing  
12 yet again payments to BellSouth for the week of April 11,  
13 2005?
- 14 A Right.
- 15 Q Let's go to page 67, the same exhibit. Would you agree with  
16 me that this is BellSouth providing a CLEC, on April 18,  
17 another Aging Summary Report, showing amounts that must be  
18 paid?
- 19 A Okay.
- 20 Q Would you agree with me that that's the last day, April 18,  
21 would have been the cut-off date for the original suspension  
22 notice dated March 18?
- 23 A I believe that's what the letter said, yes.
- 24 Q Would you agree with me that on page 79 of the same exhibit,  
25 on the April 18 Aging Report, it shows a total past due

1 amount less disputes and current charges of \$217,000?

2 A That's what it appears to show, yes.

3 Q The next page, page 80, would you agree with me that this

4 is an e-mail with a payment from the CLEC of April 18?

5 A It appears to be, yes.

6 Q And the last page of the exhibit shows the amount paid by

7 that CLEC?

8 A Okay.

9 Q Mr. Russell, wouldn't you agree with me that there's no

10 guesswork involved in BellSouth's collections process?

11 A ~~I disagree, because if you'll look at pages 36, the end of~~

12 ~~every one of your Aging Reports, 56 and 83, at the end of~~

13 ~~every one of your Aging Reports, it has this disclaimer,~~

14 ~~This is not an official BellSouth document. If~~

15 ~~there is a conflict with this report, the~~

16 ~~BellSouth bill remains the official document.~~

17

18 ~~Which leads me to my point, you're playing games. Put the~~

19 ~~amount you want due. When the CLEC pays it, don't play any~~

20 ~~more games and threaten to terminate service. It is promising~~

21 ~~to me that this account manager is judicious enough to deal~~

22 ~~with their CLEC client in an appropriate fashion. NuVox, on~~

23 ~~the other hand, has had problems with its account managers~~

24 ~~where we can't get any participation, help or anything else.~~

25 ~~Our experience has been that BellSouth plays games with~~

26 ~~these documents, just in the manner that it's doing with~~

27 ~~these late payment reports.~~

- 1 Q Give me an example of the game BellSouth played, please.
- 2 A Give you ~~an example of a game BellSouth played,~~ okay. Two  
3 years ago BellSouth demanded a deposit of \$6 million from  
4 NuVox. ~~Why did they demand an amount of \$6 million? Because~~  
5 BellSouth's dispute group ~~had not recognized bona fide~~  
6 ~~disputes from NuVox to BellSouth. BellSouth's account~~  
7 ~~management group had not posted payments.~~ In fact, after we  
8 got through that entire process, it took more than 90 days  
9 with Langley Kitchings, Sandra Cetti, Eric Reinhold, and  
10 others in BellSouth's Atlanta or Birmingham center, I  
11 can't remember which one. BellSouth, in fact, returned  
12 money to NuVox based on their deposit dispute that when  
13 they originally wanted \$6 million. ~~So, you tell me what~~  
14 ~~kind of games are played there?~~
- 15 Q Mr. Russell, is posting of disputes an issue in this  
16 arbitration?
- 17 A It's an issue when ~~you're threatening to hold a sword over~~  
18 ~~the CLEC saying that unless you pay all of these amounts~~  
19 ~~and any other amounts that come due, whether or not they're~~  
20 ~~listed on the notice, yes, the posting of disputes is a~~  
21 ~~material indicator of the problem with this system.~~
- 22 Q Mr. Russell, is the posting of disputes one of the 107  
23 issues the Joint Petitioners identified in the arbitration  
24 petition they filed originally in February 2004, or one  
25 of the issues identified in the arbitration petition it

1 filed with this Commission on March 11, 2005?

2 A It is not.

3 Q Thank you, no further questions.

4 CHAIRMAN MITCHELL: Thank you, sir.

5 Mr. Heitmann?

6 MR. HEITMANN: I have nothing further.

7 CHAIRMAN MITCHELL: Okay, we'll go to  
8 Mr. Culpepper, please.

9 MR. CULPEPPER: Ms. Blake will present  
10 BellSouth's position.

11 CHAIRMAN MITCHELL: Certainly, Ms. Blake.

12 **SUMMARY BY MS. BLAKE:**

13 CLECs receive bills from BellSouth on a monthly basis and  
14 as a result, know when bills are due and what amounts are  
15 owed. Accordingly, 30 days on average from the bill date  
16 is sufficient time to pay bills before the next due date,  
17 as evidenced by the payment history of NuVox. To the extent  
18 the 30 day billing cycle to begin at bill receipt, for  
19 example, would create a rolling due date that cannot be  
20 supported by BellSouth's billing systems without substantial  
21 modifications. Importantly, as part of the collection  
22 process, BellSouth provides all CLECs with reports called  
23 Aging Reports that identifies what amounts are due to avoid  
24 suspension and termination. There is no guesswork required  
25 by the CLEC to pay all amounts that become past due during

1 Q That's not correct, is it?

2 A Former Joint Petitioners.

3 Q Okay.

4 MR. HEITMANN: Nothing further.

5 CHAIRMAN MITCHELL: Mr. Culpepper?

6 MR. CULPEPPER: No questions, Mr.  
7 Chairman.

8 CHAIRMAN MITCHELL: Thank you, sir.  
9 Mr. Pringle?

10 MR. PRINGLE: Issue 101, this is also  
11 Mr. Russell.

12 CHAIRMAN MITCHELL: Okay, Mr. Russell,  
13 please.

14 ISSUE NO. 101

15 SUMMARY BY MR. RUSSELL:

16 ~~This issue relates to how many months of billing should be~~  
17 ~~used to determine the maximum amount of the deposit that~~  
18 ~~a CLEC must post with BellSouth.~~

19 BellSouth has already agreed to maximum deposit language  
20 that requires — it will allow BellSouth to request a  
21 maximum of one-month for services billed in advance and  
22 two-months for services billed in arrears. The Joint  
23 ~~Petitioners would be willing to accept~~ that language in  
24 ~~this instance and that's the proposal~~ that we have on the  
25 ~~table in our language in the attachment.~~

1 CHAIRMAN MITCHELL: Thank you, sir.

2 Ms. Belser?

3 **CROSS EXAMINATION BY MS. BELSER:**

4 Q Mr. Russell, is the language that you just testified about,  
5 is that the language, I believe in your testimony you said  
6 that BellSouth and ITC^DeltaCom had agreed to recently?

7 A That's correct.

8 MS. BELSER: Nothing further, Mr.  
9 Chairman.

10 CHAIRMAN MITCHELL: Commissioners?

11 [No Response]

12 Mr. Culpepper?

13 MR. CULPEPPER: Thank you, Mr. Chairman.

14 **CROSS EXAMINATION BY MR. CULPEPPER:**

15 Q Mr. Russell, I believe early today you testified that NuVox  
16 acquired NewSouth in May of 2004, is that correct?

17 A That's when the agreement for the acquisition was reached;  
18 the full acquisition was not approved by all the regulatory  
19 agencies until the end of the year.

20 Q I believe you testified earlier today in relation to Issue 4  
21 that NuVox had acquired the NewSouth/Alltel Interconnection  
22 Agreement?

23 A I think it'd been assigned to NuVox.

24 Q Isn't it true that in that particular Interconnection Agree-  
25 ment, NuVox agreed to a three-month deposit cap with Alltel?

1 MR. HEITMANN: Mr. Chairman, I'm going  
2 to object to this line of questioning. It  
3 is totally beyond the scope. The agreement,  
4 it's beyond the scope of the questioning  
5 from counsel for ORS, and it's beyond the  
6 scope of any questions you've asked. I don't  
7 believe you've asked any.

8 MR. CULPEPPER: Mr. Chairman, if I may,  
9 the Joint Petitioners attached a portion of  
10 the Alltel/NewSouth Communications Inter-  
11 connection Agreement in support of their  
12 position, new testimony, on Issue 4. They  
13 submitted a redacted version. The redacted  
14 part of exhibit B is the deposit provision,  
15 which, in fact, is a provision as part of  
16 this — that is an issue that we are currently  
17 arbitrating. I'll go further and state that  
18 in the rebuttal testimony filed by the  
19 Joint Petitioners, the Joint Petitioners  
20 state that BellSouth's two-months maximum  
21 deposit cap is unreasonable and more than  
22 can be justified, and they go on to support  
23 that on page 73 of the rebuttal testimony  
24 by citing that BellSouth had agreed to a  
25 lesser deposit cap with Delta^Com.



1 So, I believe it's well within the scope  
2 of cross examination. If they're going to  
3 bring out a piece of an Interconnection  
4 Agreement, then we can ask questions about  
5 the whole of the Interconnection Agreement  
6 when this witness has already testified to  
7 that NuVox has adopted in its entirety.

8 MR. HEITMANN: Mr. Chairman, Mr.  
9 Culpepper's line of questioning is well  
10 beyond the scope of the Agreement and the  
11 procedure the Commission has ordered. If Mr.  
12 Culpepper wants to ask questions about  
13 ITC^DeltaCom's maximum deposit provision,  
14 that is what Mr. Russell's testimony is  
15 about. Counsel for ORS asked no questions  
16 about the Alltel Agreement. BellSouth has  
17 already testified about the Alltel Agree-  
18 ment. It's beyond the scope of what we've  
19 agreed to do here today.

20 MR. CULPEPPER: I would just say, Mr.  
21 Chairman, it's new testimony and it's also  
22 in the record as well.

23 CHAIRMAN MITCHELL: We note that that  
24 is in the record. We're going to allow you  
25 to proceed.

1 [Document is Distributed]

2 MR. CULPEPPER: This is Exhibit 11 to  
3 Ms. Blake's rebuttal testimony.

4 MR. TURNER: Mr. Chairman, may we take  
5 a brief break?

6 CHAIRMAN MITCHELL: Yes, sir. We'll take  
7 a ten-minute break.

8 [Short Recess]

9 CHAIRMAN MITCHELL: Thank you, be seated  
10 please.

11 MS. BELSER: Mr. Chairman?

12 CHAIRMAN MITCHELL: Ms. Belser.

13 MS. BELSER: Thank you. Mr. Chairman,  
14 I appreciate the Commission taking that  
15 break. I had a question over a procedure and  
16 was addressing that with Mr. Turner when he  
17 asked for the break. I just wanted to let  
18 the Commission know that I am satisfied with  
19 our discussion during the break. I appreciate  
20 the Commission's indulgence.

21 CHAIRMAN MITCHELL: Absolutely, Ms.  
22 Belser. Thank you.

23 Mr. Culpepper?

24 Q [Mr. Culpepper] Mr. Russell, do you have the Alltel/NewSouth  
25 Interconnection Agreement in front of you?

1 A Yes, I do.

2 Q Would you please turn to page 6 of it, section 8.1?

3 A Yes.

4 Q Would you agree with me that NewSouth has agreed to a  
5 three-month deposit with Alltel in this Interconnection  
6 Agreement?

7 A Yes, but we don't have any amount on deposit with Alltel.

8 Q Would you agree with me that the first sentence of 8.1  
9 states that,

10 Alltel, in its discretion, may require the  
11 security deposit.  
12

13 A Yes, but like I said, we don't have any amount on deposit  
14 with Alltel.

15 Q Is it your testimony that NewSouth — NuVox would not pay  
16 a three-month deposit if Alltel actually made the demand  
17 for it?

18 A They've never requested it, and I don't expect they would.  
19 We're a good customer of theirs and they treat us as such.

20 MR. CULPEPPER: No further questions.

21 CHAIRMAN MITCHELL: Thank you, sir. Mr.  
22 Heitmann?

23 MR. HEITMANN: Nothing further.

24 CHAIRMAN MITCHELL: We go back to you,  
25 Mr. Culpepper, and I believe it'll be Ms.  
26 Blake. You don't have to get up; we've

1 CHAIRMAN MITCHELL: Ms. Blake?

2 **SUMMARY BY MS. BLAKE:**

3 Thank you. BellSouth has agreed to offset deposit requests  
4 by undisputed amounts due the CLEC under attachment 3 of  
5 the Interconnection Agreement. The Joint Petitioners ask  
6 for the offset provision to include disputed amounts. The  
7 Joint Petitioners' position is unreasonable and should be  
8 rejected. BellSouth is not allowed to terminate service  
9 based on nonpayment of disputed amounts, and BellSouth is  
10 unwilling to include disputed amounts in the offsetting  
11 arrangement.

12 Thank you.

13 CHAIRMAN MITCHELL: Ms. Belser?

14 MS. BELSER: No questions.

15 CHAIRMAN MITCHELL: Commissioners?

16 [No Response]

17 CHAIRMAN MITCHELL: Mr. Heitmann?

18 MR. HEITMANN: Nothing.

19 CHAIRMAN MITCHELL: Mr. Culpepper?

20 MR. CULPEPPER: Nothing further.

21 CHAIRMAN MITCHELL: The next issue.

22 MR. HARGRAVE: Rule 103, and that's

23 Mr. Russell. Issue 103.

24 CHAIRMAN MITCHELL: You've been in

25 court too long.

[Laughter]

ISSUE NO. 103SUMMARY BY MR. RUSSELL:

Issue 103 is about, should BellSouth be entitled to terminate service to a CLEC due to the nonpayment by the CLEC or refusal to remit any deposit that BellSouth demands, within 30 days of that demand.

We don't have any problem if BellSouth suspends or terminates service to the CLEC if the CLEC has agreed with BellSouth on a deposit amount and then simply refuses to make that deposit or if this Commission orders us to put a deposit of a certain amount with BellSouth and we refuse to make that deposit. The only issue that we're talking about here is when BellSouth makes an unilateral demand to the CLEC of a deposit amount and there's a dispute related to that deposit amount hasn't been decided. During the pendency of that dispute, we believe that that should go to dispute resolution.

This has worked for the parties now for seven or eight years. BellSouth will request a deposit, we'll work with their people, we'll figure out if they've been just recognizing disputes in a timely fashion, if they've been posting payments in a timely fashion. In every instance where we've had negotiations regarding a dispute, the amount BellSouth requests and the amount that is later put in as

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1 a deposit is always much less the amount put in the deposit  
2 than what they request. Our experience has been, they  
3 request too much.

4 In this instance where BellSouth makes a request and  
5 the CLEC disputes it, BellSouth's looking for the ability  
6 to terminate services to us and your constituents. This is  
7 not over anything that your constituents have done wrong.  
8 It's not over any failure by a CLEC to make payment for  
9 services rendered. All it is, is a dispute about a deposit.  
10 It is patently unfair for one party to have that much  
11 power and leverage over another when what you're talking  
12 about is a dispute amount, which you-all are in perfect  
13 position to decide if the parties on their own are unable  
14 to do so through dispute resolution.

15 CHAIRMAN MITCHELL: Ms. Belser?

16 MS. BELSER: No questions, Mr. Chairman.

17 CHAIRMAN MITCHELL: Commissioners?

18 Commissioner Wright.

19 **EXAMINATION BY COMMISSIONER WRIGHT:**

20 Q Mr. Russell, the 30 days that BellSouth suggests in there's,  
21 if a deposit amount had been requested to be posted by  
22 BellSouth from you and you disputed that, how many days are  
23 you going to wait before you would say, we're going to  
24 dispute this officially? I mean, are you going to wait 30  
25 days, 60 days or are you going to wait 10 days?

1 A Our past experience has been — this is the way it usually  
2 works, BellSouth will make a request related to your  
3 financial records, an annual review, when they come in  
4 with a deposit request. The last one that we did, they  
5 came in with a request for \$6 million. We disputed that.  
6 Hey, we want \$6 million. No, you're not getting it. But,  
7 usually you're working right with them. The point being,  
8 in that instance it took 90 days during dispute resolution,  
9 and dispute resolution is nothing more than this: we have  
10 a dispute, we're going to work in good faith to resolve  
11 it. If we can't resolve it, we're going to go to the Com-  
12 mission or to court if we get that right. Okay, so, in that  
13 instance, the last time we did this, we worked through  
14 that over a 90 day period. This not only required working  
15 with BellSouth's credit collections group — the lady  
16 named Sandra Setti — runs. It also requires working with  
17 their other groups, dispute recognition group and one other,  
18 the billing group that has to post your payment to deter-  
19 mine these things, okay.

20 ~~The parties have agreed to specific criteria for~~  
21 ~~deposits here, but our position is that if we dispute the~~  
22 ~~amount that they're requesting, or if we don't want one~~  
23 ~~party, in this case, Bellsouth, to be able to terminate~~  
24 ~~service.~~ We try to work with them as fast as possible to

1 get this resolved.

2 Q Okay, thank you.

3 CHAIRMAN MITCHELL: Commissioner  
4 Fleming.

5 **EXAMINATION BY COMMISSIONER FLEMING:**

6 Q Yes. Could you explain a little more about why there is  
7 so much disagreement on the amount of the deposit? How is  
8 that coming into question; and also, on that \$6 million  
9 deposit, what did you end up paying?

10 A Okay, those are both good questions. I'll take them one at  
11 a time. The dispute over the amount is this, the Inter-  
12 connection Agreement that we're currently operating under,  
13 which, in fact, is the same Interconnection Agreement that  
14 Xspedius is operating under because they opted in the  
15 Agreement that NuVox had. I'm not positive if this was  
16 the exact provision in the Agreement, but the parties  
17 always operated under the idea that BellSouth, their initial  
18 request would be, we want two-months of security for the  
19 services that we provide. Your average billing is \$3million  
20 a month, so we want \$6 million. Well, there are other factors  
21 that BellSouth will look at — your financial health, have  
22 you raised nay money recently, what's your cash flow like,  
23 other things, different factors we looked at then that are  
24 going to govern us in this new Agreement.

25 ~~So, our dispute is related to, well, sure we bill \$3~~

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1 million, but we dispute \$1 million, you hadn't recognized

2 that yet, so really using a \$3 million number per month

3 isn't correct, it should be \$2 million. This is a hypo-

4 thetical. We argue about that. We argue about the amounts

5 we had outstanding. We may provide them information that

6 we just raised some money and therefore, our cash on hand,

7 we're in a good position, we don't think we need to have

8 a deposit, and we've been in business with you for six,

9 seven years now and we've paid you every single payment

10 we've owed you.

11 So, that's why there were those disputes. We do have

12 new criteria under this Agreement where we hope that's

13 going to eliminate those disputes.

14 Your second question was when they requested \$6 million,

15 what happened: at that time NuVox had between \$1.5 million

16 and \$2 million on hand with BellSouth. After we went through

17 all the criteria, looked at all the factors, BellSouth gave

18 us money back. We then had a deposit on hand with BellSouth

19 of \$1,050,000. Now that we acquired NewSouth, NewSouth had

20 a cash deposit on hand with BellSouth of \$500,000. So, the

21 company in total now has \$1.5 million on deposit with

22 BellSouth.

23 CHAIRMAN MITCHELL: Any other  
24 questions?

25 [No Response]

1 CHAIRMAN MITCHELL: Mr. Culpepper?

2 MR. CULPEPPER: No questions.

3 CHAIRMAN MITCHELL: Mr. Heitmann?

4 MR. HEITMANN: No questions.

5 CHAIRMAN MITCHELL: We'll go to Ms.

6 Blake, then.

7 MR. CULPEPPER: Actually, Mr. Chairman,  
8 it's Mr. Ferguson on this issue.

9 CHAIRMAN MITCHELL: Okay, Mr. Ferguson.

10 Thank you.

11 **SUMMARY BY MR. FERGUSON:**

12 Under Item 103, the parties do not dispute BellSouth's  
13 right to collect a deposit to mitigate financial risk, nor  
14 is there a dispute about the specific and objective criteria  
15 BellSouth must follow to determine the need for a deposit.  
16 The dispute is over what happens when a CLEC doesn't respond  
17 within 30 days to a deposit request and doesn't file a  
18 dispute with the Commission. In that case, BellSouth  
19 should have the right to terminate services to the CLEC.

20 CHAIRMAN MITCHELL: Ms. Belser?

21 MS. BELSER: No questions, Mr.

22 Chairman.

23 CHAIRMAN MITCHELL: Commissioners?

24 [No Response]

25 CHAIRMAN MITCHELL: Mr. Heitmann?

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MR. HEITMANN: No questions.

CHAIRMAN MITCHELL: Mr. Culpepper?

MR. CULPEPPER: No questions.

CHAIRMAN MITCHELL: Yes, sir. Mr.  
Pringle.

MR. PRINGLE: Last but not least,  
Issue 104, and that's going to be Mr.  
Russell.

CHAIRMAN MITCHELL: Okay, Mr. Russell.

ISSUE NO. 104

SUMMARY BY MR. RUSSELL:

~~As you all heard just now in BellSouth's position regard-~~  
ing Issue 103, Issue 104 deals when there is in fact a  
deposit dispute, who has the burden of bringing that dispute  
before this Commission? In almost any other facet of life,  
the party wanting to change the circumstances pursuant to  
an agreement, has the burden of bringing the issue before  
a commission or before a court. In dispute resolution, if  
the parties under our current Agreement, the Agreement we're  
operating under today, if the parties couldn't agree to  
the dispute and BellSouth wanted an additional dispute,  
it would be BellSouth's burden to bring that issue to the  
Commission. If, on the other hand, NuVox wanted a refund of  
that deposit and we couldn't agree to that, it would be  
~~NuVox that would petition the Commission, say, we believe~~

1 we're due a refund

2 And this scenario it turns this whole system upside  
3 down. BellSouth is proposing in their language that if they  
4 want a deposit, they demand a deposit from NuVox, we dis-  
5 agree with the deposit amount, who's the burden on to get  
6 that dispute resolved or risk losing service? The burden  
7 is on NuVox. That is backwards. If they want more money  
8 from us for a deposit and we can't agree to it, they should  
9 come to you-all.

10 Now, let's add another layer of unfairness to this.  
11 BellSouth comes in and demands a \$6 million deposit from  
12 NuVox. Under the rules they're proposing today, NuVox has  
13 to come to this Commission and file a dispute saying, we  
14 don't believe \$6 million is appropriate and by the way,  
15 in order so that we can have you-all hear this dispute, we  
16 have to post a bond of \$3 million, half the amount of the  
17 deposit, so that you can hear this, so that we can have you  
18 decide if what they're asking is fair. That is backwards.  
19 I'll tell you how backwards it is, that when we want a  
20 deposit refund, do you think BellSouth has to petition this  
21 Commission and post half of the deposit refund that we  
22 want? They won't agree to that. This is a patently unfair  
23 provision. If the parties can't agree to a deposit amount  
24 or a refund request, the party requesting the change in  
25 the relationship should come to this Commission and have

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1 you ~~decide what's fair.~~

2 Over seven years we've worked together on deposits  
3 under a regime that has to date worked BellSouth wants to  
4 abandon that regime and tilt the scales totally in their  
5 favor going forward. Given that this Agreement will run  
6 through 2009, we think that would be a terrible decision.  
7 ~~We urge you to go with our language here.~~

8 CHAIRMAN MITCHELL: Thank you. Ms.

9 Belser?

10 MS. BELSER: No questions, Mr. Chairman.

11 CHAIRMAN MITCHELL: Commissioners?

12 [No Response]

13 CHAIRMAN MITCHELL: Mr. Culpepper?

14 MR. CULPEPPER: No questions, Mr.

15 Chairman.

16 CHAIRMAN MITCHELL: Mr. Heitmann?

17 MR. HEITMANN: No questions.

18 CHAIRMAN MITCHELL: Thank you, sir.

19 We'll go to Ms. Blake.

20 **SUMMARY BY MS. BLAKE:**

21 Yes, sir. It is undisputed that BellSouth is entitled to a  
22 deposit if Joint Petitioners cannot satisfy specific and  
23 objective deposit criteria. If the Joint Petitioners believe  
24 that a deposit demand has not been made in accordance with  
25 the deposit criteria and choose not to negotiate a deposit

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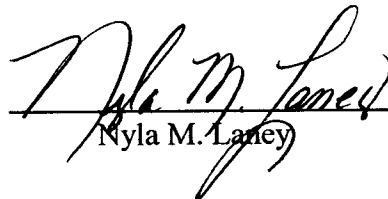
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